INTRODUCTION
TO THE
STUDY OF GOVERNMENT

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AN INTRODUCTION TO THE STUDY OF GOVERNMENT

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AN INTRODUCTION

TO THE

STUDY OF GOVERNMENT

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PREFACE

Since this book was conceived and written, events have come to pass which will ultimately be reflected in momentous political changes among the chief states of the modern world. Such changes, however, will certainly develop along the lines of liberal experiment in government as such experiment has been made in various democratic countries. A study of modern government in general will, therefore, have a value to the student in his consideration of coming possibilities in European political organization.

This book has been written to place before students a concise statement of the nature, organization, and operation of government as government exists in the foremost states of the modern world. On the one hand, it covers a narrower field than the current textbooks on Political Science; on the other, it covers a wider field than the current textbooks on the government of the United States. I have endeavored, after a study of various modern governments, to set forth general principles of government and to show how these general principles are modified in practice by particular states.

Two years ago I wrote to several of the leading publishers in this country asking for the titles of their publications covering the field of government, and specified the nature of the material I desired. In reply, the publishers submitted works on Political Science, books on the government of the United States, and theoretical treatises on principles of government in general. So far as I could discover, no book of the precise character I wanted was in print. After considerable hesitation, I planned the work myself. The greatest part of my available time since then has been spent in writing the book.

The general divisions of my plan are those that are commonly adopted by political science writers. The only innovation that

deserves special mention is the insertion after a number of the chapters of what I have called "Statistics and Illustrative Citations." It is intended that these shall be used in some such way as "Source" books and volumes of "Readings" are used in many history courses to-day. It has undoubtedly been the experience of most history teachers that an author's statement supported by documentary proof makes a much greater impression than the same author's statement unsupported. A "sphere of influence," for example, may sound visionary to the student when it is described in a detached way by the author, but it becomes vivid reality when he reads a treaty between two states in which the term is continually repeated and its meaning made manifest.

In the preparation of this study, valuable assistance has been rendered by Lieutenant Robert M. Lyon, United States Army, at present Assistant Professor of History at the United States Military Academy. He has prepared some of the statistical tables and has read the entire book in manuscript, offering a number of suggestions which I have been glad to adopt.

L. H. H.

West Point, N. Y.,
October, 1914.

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AN INTRODUCTION TO THE STUDY OF GOVERNMENT

AN INTRODUCTION TO THE STUDY OF GOVERNMENT

CHAPTER I

GOVERNMENT

I. The Nature of Government

All human communities are organized in such a way that certain members of the community have the power to issue and enforce commands over the others. A system has been established in all human societies, whether by force, by mutual contract, or by the slow process of evolution, whereby the community at large yields allegiance and obedience to the will of a few. This organization by which the exercise of sovereign power is vested in certain individuals of a community is known as the government.

Nature of government.

To understand more clearly the nature of government as distinguished from another fundamental concept of political science, the idea conveyed by the term "government" should be compared with that conveyed by the term "state." *State* is the more comprehensive term, including the elements of *territory*, *population*, *sovereignty*, and *political organization*. *Government* is but a single word to characterize the *political organization* of the state.

State and government.

All states are essentially alike, for all possess the same elements. It is not possible to imagine a state without territory, or without people, or without sovereignty (*i.e.* independent supreme power), or without government. Of all these elements, however, the

one best qualified to serve as a distinguishing characteristic of the state as a political unit is the last, government. The territories of states may differ in extent and topographical features, the peoples of states may differ in numbers, race, and degree of civilization, the sovereignty of states is always theoretically equal in independence, but a consideration of no one of these elements gives an idea of the most essential differences between modern states. For this idea we turn to the element of government.

State government and local government.

According as we refer to the political organization of the whole state or to the political organization of divisions of the state we may talk of state government and of various kinds of local government, as commonwealth government, provincial government, departmental government, municipal government, colonial government, etc. The state government, however, exercises the supreme power throughout the whole territory and over the whole people of a state and determines the organization of the various kinds of local government. It is, therefore, with the fundamental characteristics of the government of states that our study is chiefly concerned.

Typical governments in Europe and America.

We may restrict our examination of governments to the governments in the states of Europe and America, for in these states may be found the most important illustrations of modern practice. In the little continent of Europe ("the peninsula of Asia," as it is often called) and in North America have originated and developed the most important experiments in political organization of modern times. Throughout Africa, in sections where the territory is not under European control, governments are those of savage or semi-savage tribes; throughout Asia, in sections where the territory is not under European control, progressive states are introducing European or American forms of political organization. Thus any consideration of government as illustrated in the states of Europe and America will give results applicable to the governments in all the civilized states of the world.

II. Purpose of Government

The fundamental purpose for which the organization of political control known as government exists is (1) to maintain peace and order for the promotion of the general welfare within the state, and (2) to insure the safety of the state from external aggression. **Purpose of government.**

It is essential that citizens of the state shall be allowed to live in conditions of peace and order, that they shall be protected in their legitimate undertakings from the consequences of disturbances incited by a portion of the public or from encroachments upon their rights by other individuals. Hence it is a primary duty of government to use its powers to suppress revolts, insurrections, or other forms of public disturbance, and to safeguard for the individual the security of civil rights, contracts, and the like. Only in a state where the public peace and order are strictly conserved, and individual rights guarded, can the people at large advance in material prosperity and general welfare.

It is essential, further, that the government insure the safety of the state from any aggression from another state. It is probable that this reason for the existence of government has its roots far back in the history of social institutions. The necessity for the protection of a community from the aggressions of neighboring tribes may have been one of the primary reasons for the development of political organization in very early times. This necessity still persists in the modern world. The greed of modern states for more territory and for superior advantages brings continual rivalry and sometimes war. The whole vast structure of international law, international diplomacy, and the like, exists for the better adjustment of the rival ambitions of various states. Every government recognizes that it is a primary duty to maintain and perpetuate its own existence and the integrity of its territories, and to keep itself in constant readiness to repel, by force if necessary, any attempt on the part of neighboring states to terminate that existence or to diminish those territories.

In modern times, some political thinkers have added to these purposes a general purpose for the mental, spiritual, and moral uplift of the world. All governments are supposed to share this general purpose in common and to coöperate when opportunities arise to further such a desirable end. The best proof, however, that the primary and fundamental purpose of a government's existence is as outlined above is the readiness of any government to cast aside all considerations of world uplift if it considers its internal peace and order, or its existence or territories, threatened.

III. Classification of Forms of Government

Classification of governments.

For convenience of treatment we may group modern types of government in certain general classes. Since governmental organization in a modern state is so complex that endless variety in detail exists, these classes must necessarily be very broad. They have a value, however, in allowing us to group the states according to certain fundamental and typical characteristics.

The most natural classification is the popular division of governments into monarchies and republics, the principle of selection being the method by which the executive head of the state is selected. According to this idea, any government whose executive head is an hereditary ruler is a monarchy, and any government whose executive head is an elected official chosen for a stipulated period is a republic. Thus England and Russia might be grouped as monarchies, and France and the United States as republics.

But unfortunately this method of classification is worthless for our purposes. Even the man who thus groups the governments realizes that there is a vast difference between the nature of the English system and the Russian system, between the French system and the United States system. We must look for other bases of classification, bases which will reveal more truly the essential characteristics of the governments,

which will differentiate the systems by reference to their nature and spirit, to their form or structure, and to their operation. We want a classification that will tell us at a glance whether a government is liberal or not, whether a government is organized according to the ancient monarchical forms or not, whether a government centralizes or distributes its powers. No single method of classification has been devised to include these various points, so that we must classify and reclassify the governments until we obtain a general notion of their characteristics.

With this consideration in mind, we may try first to group governments as (1) autocratic, (2) aristocratic, or (3) democratic, according as the system provides for control (1) by one person, (2) by a limited class or group of persons, or (3) by the mass of persons in the state. Such a grouping is significant of the essential nature of the government, but a little thought will show that it reveals little of governmental structure or operation.

Again, we may group governments as (1) hereditary or (2) elective, according as the system provides for an executive head (1) by any of the various forms of inheritance or (2) by any of the various forms of election. Such a grouping complies with our second requirement in that it reveals a prominent characteristic of the form or structure of the government, but we realize that it gives little indication of government's essential nature or practical operation.

Yet again, we may group governments as (1) unitary or (2) federal, according to the way the system provides (1) for the centralization of governmental powers in a single organization, or (2) for the distribution of these powers between the central and local organizations in the state. Such a grouping emphasizes an important factor in the operation of government without revealing much of the fundamental nature or outward form.

By a combination of these three classifications we may gain a general notion of the chief characteristics of a government and its resemblances to and differences from other governments.

1st Classification

The classification of governments according to the relative number of individuals concerned in governing is as old as Herodotus (5th century B.C.), yet it is still serviceable. An autocracy (or despotism) is a government in which the final supreme control is vested in the will of a single individual. In complex governmental affairs, of course, a vast body of officials is necessarily associated with such an individual in execution and administration, but this fact does not alter the essential character of the government.

Autocracies.

Autocratic government was almost certainly the earliest form of government. The unrestricted power of the chieftain in the rudimentary state of primitive times can scarcely be questioned. At an early period in authentic history, autocratic government was the usual government in the states of the world. Such was the government of ancient Egypt and of the mighty states of Asia. Even into a relatively modern period the autocratic government persisted. Whether Louis XIV ever used the words "*L'état, c'est moi*" or not, the statement accurately characterized the spirit of his government. In effect, Russia to-day presents an example of autocratic government, despite the creation and present existence of the duma.

An aristocracy is a government in which the supreme power is in the hands of a limited group or class of the people.

Aristocracies.

Compared with the number of autocratic governments of the past and of democratic governments of the present, few examples of aristocratic governments are revealed by history. No aristocratic government has shown a capacity for permanent existence. The reason is to be found in the nature of the aristocratic form. The unity of action demanded by the government of a great state is greater than can be consistently maintained by a group of men invested with equal authority and equal rank. Either the arrogance of the governing class

excites the hostility of the other classes in the state and ends in the overthrow of the rulers, or natural jealousies create factions among the governing class that result in schism and the destruction of the government. Notable aristocracies have, however, existed for a limited period. In relatively modern times, Venice offers the best example of a strictly maintained aristocracy. Once among the most powerful and famous governments of Europe, controlling absolutely certain gateways of commerce, the government of Venice was a close aristocracy in which on the one hand the mass of the people were of no consideration and on the other the powers of the duke or doge were jealously checked on all sides lest they should be elevated into autocracy. The neighboring state of Florence, with its Guelphs and Ghibellines, and later with the famous Medici family, may properly be classed also as an aristocracy, even though a semblance of a popular advisory body existed.

A democracy is a government in the organization of which the people exercise an active control.

Democracies (1) direct and (2) representative.

The people may exercise this control in one of two ways, *directly* or *indirectly*. In certain states the mass of the people gather in public assembly and act *directly* in governmental affairs. Such a system was in effect in the small city-states of ancient Greece and is to-day retained in a few of the small cantons of Switzerland. The enormous population of most democratic states in modern times, however, has made such direct action on the part of its citizens impracticable. Consequently, what is known as the representative system is now established in democracies. According to this system, a relatively small number of persons are delegated to act as the representatives of the mass of the people in affairs of government. Under this system, the people exercise their control over the government *indirectly*. In theory, the representatives hold a trust for the mass of the people: the people have a right to expect their representatives to decide for them as they themselves

would decide could they be gathered together in a deliberative assembly. In practice, grave abuses of the representative system have at times existed. In England, before the passage of the reform bill, for example, a considerable proportion of the so-called popular house of Parliament owed election to the will of a few great landowners and were naturally influenced by this fact in their deliberations. In the United States the people have upon occasions had a suspicion that the representatives were acting not so much as trustees for the nation at large as promoters of the interests of special individuals or corporations. In general, a disposition on the part of some of the representatives of the people to be influenced in one way or another against the public weal is one of the weaknesses of this representative system of government.

2d Classification

Hereditary and elective executive head.

The second general classification is based on a feature of the structure of government; namely, on the distinction between an hereditary executive head and an elective executive head.

The elective executive head is not a recent development in government, nor has the election of the executive head been restricted to democratic governments. It is probable that in primitive times a form of election was used to choose the chieftains of tribes, and we know that in relatively modern times the autocratic head of the Holy Roman Empire was elected to his office. Yet it is a fact that generally in history the notion of elective executive is associated with democratic government and the notion of hereditary executive is associated with autocratic government. Since early in the nineteenth century, however, the principles of democratic government have made great progress, so that at the present time all the governments in the foremost states of the world, whether with an hereditary or an elected executive, have important democratic features. Where hereditary executives are retained

at the head of such governments, they are survivals from their autocratic predecessors and their powers are strictly limited and subordinated to the political control of the people. Thus in England the hereditary monarch is only a nominal sovereign, and in Italy his prerogatives are limited by constitutional provisions. In states where the hereditary monarch failed to adapt himself to the growing democratic spirit of his times, the whole organization of government was changed to replace the hereditary by an elective head. Thus in France with the throes of a series of bitter revolutions was born a republic. And thus, in our own age, little Portugal and unwieldy China have turned out their hereditary sovereigns to install a new organization with an elective head.

Principles governing inheritance.

The principles governing the inheritance in hereditary governments differ widely, as do also the principles governing election in elective governments. In hereditary governments, according to one system, priority of birth entitles the oldest member, or the oldest male member, of the family of the deceased ruler to be successor. Thus a brother of a deceased ruler might succeed to the throne. According to a second system, the oldest immediate descendant of the deceased ruler is the successor, or, as modified in many cases, the oldest immediate male descendant of the deceased ruler. Thus in ordinary cases only children of a deceased ruler can inherit. In cases where a ruler leaves no children, the rule may revert to a living descendant of a former ruler.

Principles governing election.

In elective governments, according to one system, the executive head is chosen by direct vote of the people. This system is used to-day in the commonwealths of the United States and in certain of the South American republics, as Peru and Brazil. The method of electing the chief executive in the United States, although originally indirect, is to-day practically direct, for the electors in the electoral college are chosen in the name of the candidate for whom they are pledged to vote. According to the second

system, the executive head is named by a body selected by the people, either by a body elected especially for this purpose or by a body existing for other purposes but constitutionally invested with this power. The method of indirect election is used in Chile, the Argentine Republic, France, and Switzerland. In Chile and the Argentine Republic electors directly elected by the people name the executive; in France and Switzerland the legislative bodies are empowered to make the choice.

Each of the methods mentioned above for choosing the chief executive has its adherents and its critics. With reference to the hereditary system as compared with the elective: does the retention of the figure of royalty foster in the people of the state a kind of loyalty and willing obedience to constituted authority, unknown in the states where the people directly or indirectly make their own chief executive? Does royalty lend dignity and prestige to a government and tend to impart stability and continuity of policy? Or is royalty merely an outworn relic of a past age, tending to obstruct the progress of political institutions? With reference to the methods of determining the succession in hereditary governments: does the restriction of the succession to the male members of the family or to the male descendants operate usually to the best advantage for the government? Or is this likewise an outworn tradition? With reference to the distinction between direct and indirect choice in elective governments: does the direct election insure the choice of the man best qualified for the office? Is it wiser to leave the determination of so important an official to a small body of selected representatives of the people? Is it wise to throw the choice of the chief executive into the legislature in view of the subsequent relations that must exist between the executive and the legislature?

3d Classification

The third basis of classification is to group governments as unitary or federal according to whether their powers are centralized or distributed. In unitary governments the system provides that one central organization shall administer the supreme authority. Local divisions of the state are made for convenience, but such local divisions are the creation of the central organization and have no rights except those which the central organization gives them. The bodies which act as administrators for these local divisions are created by the central organization, are intrusted by the central organization with certain functions, and are removable at the will of that central organization. In federal governments, on the other hand, the various powers of government are distributed according to their nature between (1) the central organization representing the whole state and (2) the several local organizations representing divisions of the state having certain rights guaranteed to them by the constitution of the state. In federal governments the local units have a constitutional right to their existence and their functions; each wields its constituted powers free from the interference or encroachment of the central organization or of the organizations of other units.

Unitary and federal governments.

Historically, unitary governments are the direct descendants from the highly centralized monarchies of a previous time. Thus France to-day has inherited from its past the centralized system; England also, considered apart from its colonies, presents in its government of the United Kingdom the centralized system; all autocracies are by their very nature examples of unitary governments.

Historical descent of unitary and federal systems.

Federal governments, on the other hand, originated in leagues voluntarily formed by units originally possessing a sense of independent action and powers. The two foremost examples of federal government, Germany and the United

States, illustrate this fact. Modern Germany is the direct descendant from the North German Federation formed after the Austro-Prussian war of 1866. This North German Federation at first included, besides Prussia, one kingdom, ten duchies, seven principalities, and three free cities, and was increased after the Franco-Prussian war of 1870 by Bavaria, Würtemberg, and Baden, and South Hesse. The nature of the union from which our present federal state is descended is too familiar to need description.

Distribution of powers in federal states.

The principles underlying the distribution of governmental powers in a federal government are uniform, but in their application of these principles states differ. It is commonly agreed that those affairs which concern the common welfare of all parts of the federation should be under the control of the central organization; and that all other affairs, affairs of local interest and importance, should be under the control of the local organizations. The lack of uniformity in applying these principles comes from the difficulty of deciding on the affairs which require uniform regulation throughout the entire federation. Federations agree in placing under the control of the central organization the consideration and treatment of international relations, as in making war or peace, in forming treaties and in regulating commerce, and the handling of such internal affairs requiring uniform legislation as interstate commerce, state coinage, laws of copyright, patents, and postal regulations. In many instances, however, federations differ. For example, the United States has no uniform civil, criminal, and commercial law system: Germany has. Again, the United States allows the separate commonwealths to make the laws covering marriage and divorce: Germany has laws uniform for the whole federation covering marriage and divorce.

A transitory system of government, outwardly somewhat resembling the federal system but clearly distinguishable therefrom, is what is known as confederate government.

Whereas in a federal government the separate units are indissolubly united by the surrender of their independent sovereign powers into the common sovereignty of the government of the whole state, in a confederate government each separate unit retains its independent sovereign power, being bound with other equally independent units in a voluntary alliance. In a *confederation* the united organization is for certain delegated functions only: in a *federation* the organized government possesses the supreme power over its constituent units. In a *confederation* each unit has the right of separate decision in most governmental affairs, thus emphasizing its full independence: in a *federation* affairs of the government of the state as a whole are not referred to the separate units except in rare cases covered by the constitution. In a *confederation* the alliance is of the nature of a league of independent states, from which any one state reserves the right to withdraw at will: in a *federation* the notion of alliance of independent units is lost in the indissoluble unified state that is created. Confederations, like aristocracies, have not shown a capacity for permanent existence. The weakness of the central power does not enable it to act with rapidity in crises, and the conflicting interests of the component units prevent that coherence of action which makes for strength.

Confederate government.

At first the federal system was almost universally praised as the last step in the evolution of government. The combination of the executive unity of the state with local independence was believed to give to government a flexibility that it had never possessed under any other form of organization. Rapidity of decision and action on the part of the central power was insured side by side with freedom for the development of local government along the lines desired by the various sections in the state. In states extending over a great area, parts of which differ radically in their social and economic conditions, federal government seemed especially necessary. In such

Weaknesses of the federal system.

states new territory might be developed under the control of a local government familiar with conditions and needs, old and settled communities could continue along their conservative and traditional lines, and both new and old could in times of national stress be represented by a unified central government whose duty would be to defend and advance the interests of the state as a whole.

But the study of the operation of federal government in the light of history has revealed certain tendencies which are liable at any time to bring about serious trouble.

In the first place, possibility of dispute always exists on the relative spheres of action of the central government and the local governments. Any individual unit in the federal state may greatly embarrass the central government, for example, by measures which are out of accord with the treaty obligations of the central government; or the central government may tend to usurp authority over matters which are by many believed to be subject to the control of the local organizations.

In the second place, the variety of laws existing in the different units on matters subject to their jurisdiction is a hindrance to the uniform development of the whole nation. For example, laws concerning labor, laws concerning the incorporation and regulation of industries, and laws concerning marriage and divorce differ radically in various of the commonwealths of the United States.

A third weakness, and a weakness that may threaten the very existence of the state, is the possibility of the formation of groups or factions of separate units within the state which shall consider that their economic interests demand their withdrawal from the federation. Such a division occurred in the United States in 1861, and was possible in Germany in the religious agitation of the Bismarckian period.

1

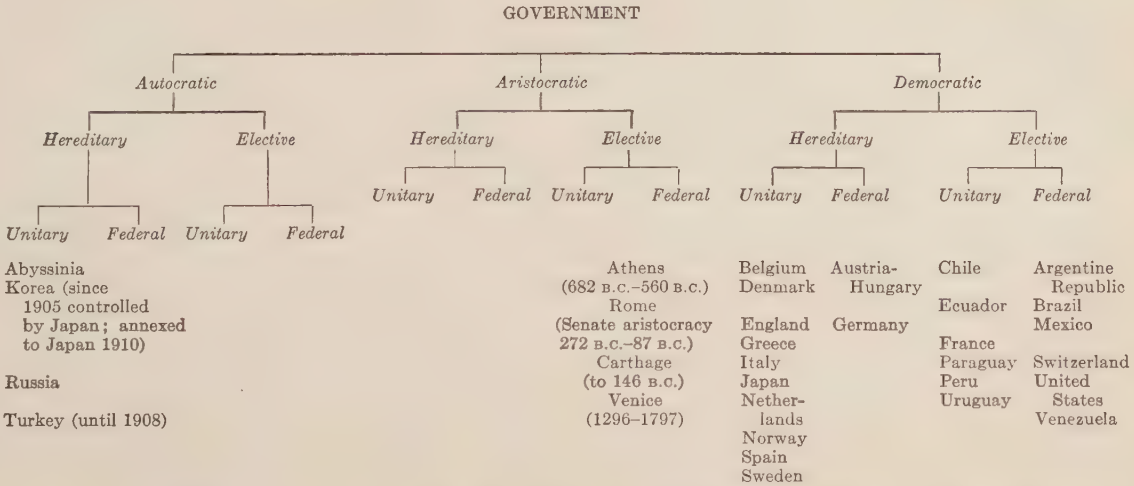
Area and Population of the Chief States Mentioned

	Area, Square Miles	Population
British Empire (from Whitaker's Almanac)		
In Europe	121,512	45,878,500
In Asia	2,187,550	323,158,000
In Africa	3,618,245	49,458,150
In North America	3,893,020	7,458,000
In Central America	8,600	50,000
In West Indies	12,300	1,730,000
In South America	97,800	314,000
In Australasia	3,214,685	6,240,000
	13,153,712	434,286,650
France	207,076	39,500,000
Dependencies: India	200	275,000
Indo-China	310,000	17,000,000
Africa	3,812,200	36,000,000
America	35,042	410,000
Oceania	9,141	110,000
	4,373,459	93,295,000
Germany	208,780	65,000,000
Dependencies: Africa	910,150	13,000,000
Asia (Kiao-chow)	117	60,000
Pacific	96,145	450,000
	1,215,192	78,510,000
Italy (including adjacent islands)	110,623	34,700,000
Dependencies: Tripoli	410,000	1,200,000
Eritrea	87,500	300,000
	608,123	36,200,000
United States (excluding Alaska)	2,974,159	100,000,000
Alaska	590,884	65,000
Hawaii	6,449	200,000
Guam	207	12,000
Philippines	121,400	8,200,000
Porto Rico	3,600	1,125,000
Panama Zone	400	125,000
	3,697,099	109,727,000

Note. — The statistics in the above tables are compiled from the standard works of reference, as encyclopedias, almanacs, year books, etc.

2

Diagram showing graphically Various Governments classified under the Threefold Division adopted in the Text



Note. — The suggestion for the above table was obtained from Leacock's "Elements of Political Science," p. 120, although the table itself is differently arranged.

CHAPTER II

SOVEREIGNTY AND THE CONSTITUTION

Sovereignty is the supreme power of the state which is exercised by its government over its territory and people. The sovereign is that person or body of persons in whom this supreme power of the state is vested.

Sovereignty and the sovereign.

I. Sovereignty

In ancient systems of government the location of the sovereign and of the sovereignty was relatively simple. The monarch whose command constituted the law of the land held in his own hands the supreme power of the state. Thus, in the Asiatic despotisms the will of the despot was the supreme power of the state over all its members. The power of the sovereign was identical with the power of the state. In certain modern democratic governments, too, the location of the sovereign and of sovereignty is not a difficult problem. In England, for example, no political power exists above the combined King, Lords, and Commons. Any measures to which they give their sanction become *ipso facto* the fundamental and unquestionable law of the state. Their sovereignty is supreme. Likewise in France, if the two houses of the state legislature act together in a National Assembly, their power is supreme. Any laws issued by this National Assembly constitute the supreme and unquestionable law of the state.

Location.

In certain types of democratic government, however, as the federative and confederate governments, the problem is more difficult. In our own system of government, for example, a general notion exists that the sovereignty is in the hands of

the people. But is there, under our system, any machinery in the government by which the people can exercise directly the supreme power? Is not the system rather one by which the exercise of sovereignty is from time to time delegated absolutely for fixed periods to certain bodies of men? It is a fact that in the United States the power to promulgate fundamental law resides in a combination of two thirds of both houses of Congress and the legislatures of three fourths of the commonwealths. Only measures sanctioned by these bodies become the will of the state, which must be accepted by all under the jurisdiction of the state. In other words, the supreme power of our state resides in bodies of persons delegated from time to time primarily for the business of ordinary legislation and only secondarily with the idea that they may be called upon to act in their sovereign capacity.

Implications of sovereignty. The notion of sovereignty implies two things, independence and unity.

1. Independence. Sovereignty implies complete independence. The freedom from any restrictions placed upon its scope by any external or internal agency must be absolute.

The reason for this is easily understood. Sovereignty which is open to restrictions of any kind is a contradiction in terms, for sovereignty is the supreme power. If supreme power is restricted, the supreme power is at once transferred to that which imposes the restrictions.

Take a concrete example to illustrate the meaning of this. Cuba has been declared a free and independent state: it maintains its own government, has its own foreign representatives, and receives recognition from other states. Yet the United States has caused to be inserted in the Cuban constitution the following proviso: "That the government of Cuba consents that the United States may exercise the right to intervene for the protection of Cuban independence, the maintenance of a government adequate for the protection of life, property, and individual liberty, and for discharging the obligations with respect to Cuba imposed by the Treaty of Paris on the

United States, now to be assumed and undertaken by the government of Cuba." Upon this provision the United States has already acted once (1906). Can it be consistently maintained in view of the above facts that Cuba as a state possesses sovereignty? Is it not rather true that the supreme power, the power of last resort, in Cuba lies outside of the state?

The notion of sovereignty implies also complete and absolute unity. In theory it is inconceivable that sovereignty can be divided in a state, that one section or organization within a state shall possess a part of the sovereign power separate from the sovereignty of the whole state.

2. Unity.

This implication in the conception of sovereignty follows naturally from the proposition that sovereignty implies complete independence. If a portion of sovereignty be reserved by any section or organization within a state, it follows that the sovereignty of the whole state is restricted by just that portion. For the reasons we have already given, any restriction upon the state's sovereignty is logically inconceivable; hence, it is equally true that a division of sovereignty in the state is inconceivable.

An explanation of sovereignty as applied to the federal state will clear up the only difficulty in understanding this unity. In the federal state we learned that certain governmental powers were reserved by the component units of the state and were exercised by such units free from the control of the central organization. Without explanation, it might be thought that this condition destroyed the unity of sovereignty. It must be remembered, however, that the *state*, by virtue of its sovereignty (*supreme power*), can establish and distribute the powers of *government* as it wills. Indivisible and independent sovereignty is an attribute of the *state* and not of the *government*. The governmental system is but an element in the state; the sovereignty of the state resides above, beyond, and superior to such system. The distribution of governmental powers, then, does not constitute a division of sovereignty, but merely

Unity of sovereignty in federal system.

an administrative convenience of government under the complete control of the ultimate independent unified sovereignty of the whole state.

From the foregoing discussion of sovereignty, the importance of this element in the state must be evident. By virtue of its sovereignty the state determines its governmental system, the relations between individuals and itself, the relations between itself and other states. Sovereignty underlies the fundamental nature of the state. Be the state large or small, autocratic or democratic, sovereignty is always the supreme power which it wields over its members, a power free from interference internal or external and completely unified within itself.

Importance of sovereignty.

II. Constitution

The body of principles by which the practical application or exercise of the sovereignty of a state is determined is known as the constitution.

Constitution: definition and scope.

Inasmuch as the sovereignty of a state is exercised through the system of government, the chief province of the constitution is to define this system of government. Hence, the constitution must outline the practical organization and machinery of government, the functions of the various agencies of government, and the relations between the governing bodies and those governed.

More narrowly, then, we may define the constitution as a collection of principles providing for the organization and operation of government, and for the adjustment of the relations between governing bodies and the governed.

A constitution may be written or unwritten. It may be a single document, like the constitution of the United States, or it may be a combination of legal precedent, individual bills and grants, and immemorial customs, like the constitution of England.

Written and unwritten constitutions.

The distinction between a constitution that is written and

a constitution that is unwritten is not important. In the case of all written constitutions that have lasted for any considerable period, judicial interpretations and acknowledged customs outside of the written document have become an essential part of the organization and operation of government. Thus to a certain extent it is true that no constitution is wholly written.

On the other hand, in the case of countries which have not a single document called a constitution, a large proportion of the fundamental principles which would be embodied in such a document is actually embodied in various separate acts decreed by the sovereign body. Hence it may be said that to a considerable extent all constitutions are written constitutions.

Furthermore, one constitution is of no more authority than another. With the early history of written constitutions it was commonly thought that these, by defining in precise and unmistakable terms the organization, functions, and operation of government, insured a greater degree of protection to the governed. It was believed that governments would be checked in their tendencies to encroach upon the rights of constituents. Experience has proved, however, that whether written or unwritten the constitution merely expresses the will of the sovereign power behind itself, and that, if the sovereign power actually resides in the people or their representatives, there can be no encroachment under either form of constitution.

Example of a written constitution.

The parent of written constitutions in the modern state is the constitution of the United States of America. This constitution was the work of a convention in 1787 to organize a government to replace that provided by the Articles of Confederation under which the colonies had been loosely joined since 1781. The success of the convention in its task was such that this constitution, termed by Gladstone "the most wonderful work ever struck off at a given time by the brain and purpose of man," has not only continued to be the foundation of our government

for more than a century, but has served as the inspiration for a series of written constitutions in other states.

Example of unwritten constitution.

The great example of the unwritten constitution is that of England. Among the various elements that form this constitution a distinction in kind may be made, but no distinction in importance. Those elements which exist by virtue of tradition and custom are equally a part of the constitution with epoch-making compacts between the Crown and the people, or with great reform measures of Parliament.

Prominent elements in English constitution.

A study of the constitution of England involves an intimate knowledge of existing institutions which have their origin in tradition and custom. For example, the English cabinet is not provided for or recognized in any authoritative written document.

It involves, in the second place, a knowledge of written documents of the nature of compacts between opposing political forces in the state. To illustrate such compacts, we may select the Magna Charta (1215), commonly called the foundation of English liberties, which among other things provides (*a*) a careful definition of feudal obligations, (*b*) regulations respecting courts of law, (*c*) restrictions upon the power of extraordinary taxation, (*d*) proper trial by law, and (*e*) honest administration of justice in courts of law.

Further, a study of the English constitution involves a reference to the statutes. For example, the Habeas Corpus Act (1679), the Bill of Rights (1689), enacting in detail the rights and liberties of the people, and the various reform acts, all form a part of the constitution.

Again, such a study involves an acquaintance with some of the great judicial decisions which have established precedent. The decisions on the Prerogative of the Crown and on the privileges of the House of Parliament and of the members thereof may be cited as examples.

And lastly, such a study involves familiarity with parliamentary precedents. Such a familiarity can only be gained

by reference to certain Committee Reports, and debates and proceedings.

A comparison of the two types of constitution will reveal certain advantages and certain weaknesses in each. The written constitution lends a certain definiteness and stability to the governmental system. Where the province and functions of the governing body are carefully set forth in a written document, it is not easy for such a body to exceed its bounds without the knowledge of the governed; and where the constitution is relatively difficult to alter, as is usually the case, changes in the fundamental provisions for government cannot be made to suit a transient whim. On the other hand, written constitutions have been criticised as tending to leave inadequate room for the development of the state. Written constitutions, difficult to alter or amend, are rapidly outgrown, but cannot easily be adapted to new conditions. By a written constitution, it is alleged, an attempt is made to incorporate in one document the principles of government for a state for all time, taking no account of what the future may bring forth.

Advantages and disadvantages of written and unwritten constitutions.

The main advantage of the unwritten constitution lies in the fact that the state is able by ordinary processes to adapt its system to changed conditions. Unwritten constitutions are themselves continuously developing to keep pace with the development of the state. The danger in the unwritten constitution, however, lies in this very adaptability, for a radical element in the state may conceivably carry the constitution beyond what conditions throughout the whole state warrant, and thus do incalculable damage. Again, in unwritten constitutions, the possibility of serious misunderstanding is ever present, for, in such a vast complication of tradition-made, custom-made, judicial, and parliamentary sources, it is possible to find support for various interpretations of particular features.

Whatever the theoretical advantages or disadvantages, the

written constitution has met with favor in democratic states outside of England. With the single exception of Hungary — and this is sometimes classed as having a written constitution — all the leading states to-day have written constitutions. The people at large have undoubtedly been influenced by their belief that their interests and fundamental rights are better safeguarded by the written constitution. It is noteworthy, too, that no state which has once adopted a written constitution has ever been satisfied subsequently with the other kind.

People favor written constitutions.

Three requisites of good constitution.

Three essential requisites of a good written constitution are breadth, brevity, and definiteness.

A constitution must be broad in its scope, because it must include an outline of the organization of government for the whole state. A statement of the province and functions of government, and of the relations between the governing bodies and the governed, requires a comprehensive document.

1. Breadth.

On the other hand, such an outline for the successful constitution should be brief. The constitution is not the place in which the details of organization should be set forth. In complex governments of modern states a recital of such details would require very great length, and would ruin the flexibility with which governments can change the details of their organization to adapt themselves to new conditions.

2. Brevity.

Lastly, the constitution must be definite. In a statement of principles underlying the essential nature of a state, any vagueness which may lead to opposite interpretations of essential features may cause incalculable harm. Civil war and disruption of the state may conceivably follow from ambiguous expression in a constitution.

3. Definiteness.

The material in a constitution may be classified under three heads: first, material defining the rights and liberties of individuals; second, material outlining the organization and powers of the government; and third, material providing the means of altering or amending the constitution itself.

Classification of material in a constitution.

One part of a good constitution has to do with the rights and liberties of individuals. The notion that individuals as such could possess rights and liberties, privileges and immunities, free from any possible interference by the government, is an outgrowth of modern liberalism. Such a conception is directly due to the different relations which are now acknowledged to exist between a state and its government.

1. Material defining rights and liberties of individuals.

In former times, government and the state were identical with respect to sovereignty — in other words, the government was the state. Thus the government then held supreme power. The conception of a sphere of rights and liberties of the individual over which the government had no jurisdiction was unknown. At the present day, however, government is recognized as merely an element of the state, an expression of the state's will for the political organization of the people. Sovereignty is seen to belong *not* to government, but to the state which is behind and responsible for government. The state, therefore, by virtue of its sovereignty, in the constitution which provides for government may directly provide also certain spheres in which the individual is free from the operation of government. Thus the state, by virtue of its supreme power, insures by constitutional guarantees the liberty of the individual from encroachments of government.

No generalization with respect to the specific rights and liberties thus guaranteed to the individuals in constitutions can be made. As men grow in political consciousness, more liberty is naturally demanded and granted. Thus the rights and liberties of the Englishman under King John would be considered wholly inadequate for the Englishman of to-day. Furthermore, the people in different modern states are not by any means in the same stage of development. The rights reserved to the Russian to-day would not satisfy the citizen of this country. In the leading states of the world, however, "individual liberty consists in freedom of the person, equality before the courts, security of private property, freedom of

opinion and its expression, and freedom of conscience" (Burgess).

A second part of a good constitution has to do with the organization and powers of government for the state. The provisions contained in this part of constitutions uniformly treat certain main features, but differ in the detail with which these features are elaborated. The features which are uniformly treated include (1) a statement of the general organization of the governing bodies, (2) the distribution of governmental powers among the various departments, (3) a determination of the various agencies of government with a description of the nature and extent of the authority of each, (4) the method of selection or appointment of officials, and (5) the composition of the electorate.

2. Matter outlining the organization of government.

In its treatment of these features, the constitution of the United States is a model. It does not attempt to cover all the details of the organization of the government. It states that there shall be a Congress with legislative powers, and it indicates to some extent the organization of this Congress; that there shall be a President to execute the laws passed by the Congress; and that there shall be a Supreme Court to determine the legality under the constitution of laws passed by Congress and of acts of individuals, commonwealth governments, and federal officials. What the constitution does not do is to state in detail *how* Congress shall do its legislative work, and *how* the President shall perform his functions, and *how* the Supreme Court shall exercise its powers. These things were wisely left to the process of ordinary law.

A third and very important part of the constitution deals with the methods by which the document can be amended. The importance of this amending provision rests in the fact that in it lies the possibility of the adjustment of the constitution to the development of the state.

3. Matter relating to amendment.

The constitutions of some states, as Italy, do not contain

specific provisions for amendment. The result in such cases is that the power of amendment has been presumed to reside in the legislative and executive bodies as one of their ordinary functions, and the state, so far as changing or amending its constitution is concerned, is exactly on a level with England. Any law passed by the legislature and approved by the executive becomes legal and constitutional, just as in England a measure passed by Parliament and signed by the executive is legal and constitutional. Hence, although Italy possesses a written constitution its government is practically on the basis of an unwritten constitution.

(*a*) **Constitutions with no provision for amendment.**

In other cases, constitutions have a provision denying to any body in the state the power of amendment. Examples of such constitutions are rare. Theoretically, however, in such cases the power to amend the constitution could reside only in the body which originally created it. Logically, such a constitution could hardly endure, for the political, social, and economic development of states always involves sooner or later a change in fundamental conditions which can be adequately met only by a corresponding change in the fundamental organization of government. A constitution which denied to any body the right to introduce and bring about such necessary changes would ultimately become so unfitted for its purposes that it would induce revolution.

(*b*) **Constitutions denying the power of amendment.**

In written constitutions having the amendment provisions, these provisions differ widely. In the United States amendments may be *proposed* in one of two ways: (1) Congress may by a two-thirds vote in each house propose an amendment; or (2) the legislatures of two thirds of the states may petition Congress to call a general convention for the purpose of proposing an amendment. After an amendment has been proposed, it may be *adopted* by one method, and only one: it must be approved by two thirds of both houses of Congress

(*c*) **Constitutions with amendment provisions: the United States constitution.**

and by the legislatures or special conventions of three fourths of the states.

Under these provisions it has been very difficult in the United States to amend the constitution. More than eighteen hundred amendments have been offered, but, with the exception of the ten amendments passed shortly after the adoption of the constitution, which may rightly be considered as an integral part of the original document, only seven have been adopted, and two of these (providing for the income tax and the direct election of senators) have been adopted within the last few years.

Amendment provisions in constitutions of European states.

In European states the method of amendment to the constitution is commonly such as to render such amendments relatively easy. In France amendments may be passed by a process of ordinary legislation by a National Assembly made up of the members of the two houses of the legislature in joint session. In the German federation amendments to the constitution are passed in the same way as ordinary legislation, with the proviso that fourteen out of the fifty-eight votes in the upper house, the Bundesrath, may defeat the amendment.

Criticism of amendment provisions in United States constitution.

The comparative rigidity of the constitution of the United States has excited abundance of criticism. For one thing, it is possible for a very small minority of the people of this country to block the passage of an amendment favored by all the rest. The census of 1910 shows thirteen states, more than the necessary number to defeat an amendment, having a population of about one eighteenth of the entire population of the United States. The legislatures of these thirteen states, representing but one eighteenth of the population of the whole country, have the power under the constitution to defeat the wishes of the legislatures representing seventeen eighteenths of the total population. Furthermore, the power of amendment is placed in legislative bodies of the various states and of the central

government and not in the hands of the people of the country at large. This fact has, it is asserted, resulted in undue conservatism and has created a condition at the present time in which the state has outgrown its constitution. In general, the machinery of amendment is very unwieldy. Washington rightly advised "to resist with care the spirit of innovation upon the principles of the constitution," but there is a limit to the degree of rigidity which is desirable. There is a real danger in a constitution which blocks the introduction of changes based on experience and long, careful deliberation.

In the case of the constitution of the United States, however, another method has been used to adapt its provisions to the development of the country. The Supreme Court has interpreted the construction and application of various provisions of the constitution as necessity has arisen, and has established itself definitely over and above Congress in the right to determine whether or not laws are constitutional.

Judicial interpretation of the United States constitution.

Its decisions and its "judicial interpretations" have played a very important part in the history of this country. The federal constitution is the supreme legal authority in the United States; hence the meaning of each provision, even of each separate word, is of the utmost significance. Although its general principles are simple and comprehensible, the increasing complexity of government and social conditions has given rise to grave problems concerning the particular meaning of clauses in the document, or concerning the relative scope of two apparently conflicting statements. In its task of final judgment as to the meaning and application of the constitution, the Supreme Court has taken extraordinary precautions. Only as specific cases are brought before it does the court attempt an interpretation, and judicial precedent is consulted wherever possible. As a result of the court's decisions through many years, gradually a logical theory of the constitution and laws has been evolved, which can be developed from generation to generation. The Supreme Court in its decisions has formulated

a fairly coherent body of doctrine with respect to the construction and application of the provisions of the federal constitution. In this manner the judiciary has played an important part in adapting our constitution to the development of the state.[1]

[1] Cf. chapter on the Judiciary.

Chap. II. Statistics and Illustrative Citations

Example of a State Whose Sovereignty is Restricted, and the Nature of the Restriction

Cuba. Sovereignty restricted (1901) by the Platt amendment, incorporated in the United States Army Appropriation Act of 1901, and accepted by Cuba as an addition to its constitution. The following letter contains the provisions added:

Havana, June 13, 1901.

Honorable Military Governor of Cuba.

Honorable Sir: Replying to your official letter dated on the eighth (8th), whereby you forward to the undersigned the report of the Honorable the Secretary of War, dated May 31st last, I have the honor to advise you that at the session held yesterday, June 12th, by the Constitutional Convention, there was taken the following

Resolution

The Constitutional Convention, in conformity with the order from the military governor of the island, dated July 25th, 1900, whereby said convention was convened, has determined to add, and hereby does add, to the Constitution of the Republic of Cuba, adopted on the 21st of February ultimo, the following

Appendix

Article I. The Government of Cuba shall never enter into any treaty or other compact with any foreign power or powers which will impair or tend to impair the independence of Cuba, nor in any way authorize or permit any foreign power or powers to obtain by colonization or for naval or military purposes, or otherwise, lodgment or control over any portion of said island.

Art. II. That said Government shall not assume or contract any public debt to pay for the interest upon which, and to make reasonable sinking-fund provision for the ultimate

discharge of which the ordinary revenues of the Island of Cuba, after defraying the current expenses of the Government, shall be inadequate.

ART. III. That the Government of Cuba consents that the United States may exercise the right to intervene for the preservation of Cuban independence, the maintenance of a government adequate for the protection of life, property, and individual liberty, and for discharging the obligations with respect to Cuba imposed by the Treaty of Paris on the United States, now to be assumed and undertaken by the Government of Cuba.

ART. IV. That all the acts of the United States in Cuba during the military occupancy of said island shall be ratified and held as valid, and all rights legally acquired by virtue of said acts shall be maintained and protected.

ART. V. That the Government of Cuba will execute, and, as far as necessary, extend the plans already devised, or other plans to be mutually agreed upon, for the sanitation of the cities of the island, to the end that a recurrence of epidemic and infectious diseases may be prevented, thereby assuring protection to the people and commerce of Cuba, as well as to the commerce of the Southern ports of the United States and the people residing therein.

ART. VI. The Island of Pines shall be omitted from the boundaries of Cuba specified in the Constitution, the title of ownership thereof being left to future adjustment by treaty.

ART. VII. To enable the United States to maintain the independence of Cuba, and to protect the people thereof, as well as for its own defense, the Cuban Government will sell or lease to the United States the lands necessary for coaling or naval stations, at certain specified points, to be agreed upon with the President of the United States.

ART. VIII. The Government of Cuba will embody the foregoing provisions in a permanent treaty with the United States.

With the testimony of our greatest consideration, very respectfully, the President,

DOMINGO MÉNDEZ CAPOTE.

(From "Translation of the Proposed Constitution for Cuba, the Official Acceptance of the Platt Amendment, and the Electoral Law." Publ. by the Division of Insular Affairs, War Department, Nov. 1901.)

CHAPTER III

THE ORGANIZATION OF GOVERNMENT

It is commonly agreed among political thinkers that governmental activities are of three kinds: legislative, executive, and judicial. The legislative activities include the formation of and deliberation upon the commands of the government; the executive activities include the enforcement and administration of the commands of the government throughout the state; and the judicial activities include the decision respecting the construction and application of the commands of the government.

Governmental activities of three kinds.

Although this distinction between the classes of governmental activities was recognized by Aristotle and reiterated by Cicero, the separation of governmental powers to correspond to these classes of activities was not clearly made in ancient or medieval political society. From early times the executive had concentrated in his own hands all political powers. What semblance of separation in the exercise of these powers appeared was due merely to administrative convenience. King Solomon himself made, executed, and decided the laws of his people. The ultimate legislative, legal, and executive power of Louis XIV in seventeenth-century France was unquestioned, however great the number of departments required by the complexity of government.

Theory of corresponding separation of governmental powers.

The growth of liberal ideas in relatively modern times is responsible for emphasizing the necessity of separating the powers of the government among mutually independent departments. The argument that only by such separation could the liberty and highest interests of the people be conserved proved powerful in those states where the people were intelligent

and progressive. A Frenchman, Montesquieu, in his book "L'Esprit des Lois" (The Spirit of Laws), 1748, did more than any other person to popularize the theory. He reasoned that if a single agent were intrusted with the power both to *make* the laws and to *execute* the laws, that agent would be strongly tempted to make tyrannical laws and to execute such laws in a tyrannical manner. And it is equally true that if the same agent *makes* the laws and *judges* of questions of obedience to the laws, the life, freedom, and property of the individual are utterly at the mercy of this single agent. And the third possible combination, of the agent who *executes* the laws being also the agent who *judges* the application of the laws, also gives to such agent all the powers of a tyrant. According to Montesquieu's argument, then, no one agent should be intrusted with more than one of the powers of government. He believed that the separation of powers was an essential requirement for the existence of true liberty for the people in a state.

Application of theory in constitutions.

Associated as they were with the idea of liberty, Montesquieu's arguments had great effect just at the time when written constitutions were first formed. The people lived in the dread of the return of monarchy and tyranny, so that they seized eagerly upon any theory of political organization which promised to preserve for them their liberty. The constitution of the United States was drawn by men thoroughly familiar with these political theories, and in so many words it is expressly provided that (*a*) "All legislative Powers herein granted shall be vested in a Congress of the United States," and that (*b*) "The executive Power shall be vested in a President," and that (*c*) "The judicial Power of the United States shall be vested in one Supreme Court." The constitutions of the various commonwealths of the United States have similar provisions, the most forceful statement, perhaps, being in the constitution of Massachusetts (1780): "In the government of this commonwealth the legislative department shall never exercise the executive and judicial powers or either of them; the executive shall

never exercise the legislative or judicial powers or either of them; the judicial shall never exercise the legislative and executive powers or either of them, to the end that it may be a government of laws and not of men." In the several governments in France during the revolutionary period a succession of constitutions illustrated the effect of Montesquieu's theory, the most striking being the cumbersome constitution of the year VIII (promulgated Dec. 15, 1799) by which separation was carried so far that the legislative was divided into four independent parts: the first (the Council of State) to propose laws, the second (the Tribunate) to debate upon laws, the third (the Legislative Body) to vote upon laws, and the fourth (the Senate) to pass upon the constitutionality of laws.

Strict separation of powers impracticable.

Experience has shown, however, that the strict and absolute separation of the powers of government in a state is utterly impracticable. A system by which the legislative body exercises *all* the legislative functions and *only* the legislative functions, the executive body *all* the executive functions and *only* those, and the judiciary *all* the judicial functions and *only* those, would be unnatural and impossible. The state is a unified institution. The separate parts of its government are all closely coördinated in the work they do, just as the several members of the human body are coördinated. That each member of the body should act entirely independently of other members is inconceivable; likewise it has been found that separate and totally independent action on the part of each of the departments of the government in the work of governing is not possible.

Examples of non-separation of powers.

In actual practice in democratic governments we have numerous examples of the intermingling of the several powers in one department. The most striking example is to be found in England, where the cabinet system has resulted in making the leaders in the *legislative* body practically in another capacity the *executive* head of the Empire. At the same time, the legislative body in itself constitutes the highest *judicial* court in the Empire, the

court of impeachment. Thus the English Parliament holds within itself *legislative*, *executive*, and *judicial* power. Further, in the practical operation of our own government, we do not observe a rigid separation of powers. The Congress, which should strictly be a purely *legislative* body, itself may constitute a high court of impeachment, thus partaking of the *judicial* powers. The *executive*, by virtue of his power of the pardon, actually exercises *judicial* power. Other leading states present the same situation, especially noteworthy in those states, like Italy, which have a cabinet government modeled after the government of England.

Although the arguments of Montesquieu seem logically sound, the evils which he prophesied have not resulted from this union of different powers in one of the governmental agencies. Indeed, where the union of these powers is most strikingly evident, *i.e.* in England, we actually find the liberties of the people most extensive. In our country, where there is a manifest intermingling of powers upon occasion, we justly pride ourselves on the civic liberty allowed the individual. In Italy, France, and Germany, in varying degrees, the liberty of the individual seems assured. The prospects of tyrannical government never seemed more remote than in the leading states of the world at the beginning of this twentieth century.

The fundamental reason why civic liberty has been maintained, in spite of the union of powers in one branch of government, lies in the nature of modern democracy. Montesquieu could not have imagined, under the conditions of his own age, a government so fully responsible to the people in all its departments that the coalescence of powers could prove no danger. For example, in England to-day the influence of the people over their government is practically direct; in the United States the influence of the people over their government is exerted at such frequent intervals (by new elections) as to preclude the possibility of tyranny. Then there is always the Right of Revolution — a moral though not a legal Right — whereby a people may rebel to overcome any effort to destroy

their liberty or restrict their progress. Government to-day in democratic states, whatever its historical origin may have been, is practically a mutual contract between the people and their governors, and exists under such recognized conditions that political tyranny has become an anachronism.

What has been said above with regard to the impracticability of separating entirely the powers of government to correspond to the activities of government should not mislead any one with regard to the fundamental value of the theory propounded by Montesquieu. There is an essential truth in the theory, well brought out by Madison in the *Federalist:* "The powers properly belonging to one department ought not to be directly and completely administered by either of the other departments; . . . Neither of them ought to possess, directly or indirectly, an overruling influence over the others in the administration of their respective powers." The important point of this conception of the theory lies in the qualifying words *directly and completely* and *overruling*. The fact that one department may have partial agency in, and control over, the acts of other departments is clearly recognized, but the independence in spirit in each of the three departments of government is emphasized. The constitutions of the leading states in the world to-day have been drawn with the essential truth of the theory of the separation of powers in mind.

CHAPTER IV

THE LEGISLATIVE

Although in theory the three departments in the governmental organization are of equal importance, in actual practice the legislative department is seen to have the greatest power. In all governments, that department exercises a measure of control over the executive and judiciary, either by its office of allotting funds for the expenses of other departments or by its regulations for their performance of their functions. It is fitting, therefore, that we should discuss the legislative department before any of the others.

Superior position of legislative.

Under all constitutions in democratic states the powers of the legislative are very broad. To the legislative is intrusted the power to consider and promulgate laws, which power includes also the power to amend or repeal existing laws, and in most cases to originate by one process or another a change in the constitution itself.

Powers of the legislative.

In the ideal democracy so important a function as this could be intrusted only to a deliberative assembly consisting of the entire body of citizens, — as was done in the small city-states of ancient Greece, and as is done at present in certain of the small cantons of Switzerland. In the great democratic states of the present day, however, the huge masses of population and the vast extent of territory have rendered the direct participation of the whole body of citizens impossible. To take the place of such a general deliberative assembly and to retain so far as practicable the participation of the people at large in the legislative functions, various systems of *representation* have been devised by which certain individuals, by one

Legislative body commonly composed of representatives.

method or another, are selected or appointed to act as *representatives* of the whole mass of the people in the legislative functions.

I. Bicameral Legislative Bodies

It is the common practice at the present day to have the legislative body organized in two separate branches, — chambers, or houses, as they are commonly called. This bicameral legislature, originating by a process of unconscious evolution out of the separate deliberative assemblies of the former different social orders, has proved in experience to have such decided advantages over a legislature of a single chamber that it has superseded the single chamber (unicameral) system in all the important countries of the world.

Organization of legislative into two chambers.

To assure these advantages, however, it is necessary that the two houses be not mere duplicates of each other. It is obvious that the mere division of the total number of representatives into two chambers, where all the representatives were chosen under the same system, would not operate to make the deliberation in one chamber different in any way from that in the other: it would serve only to retard legislative action.

Necessity of difference in the composition of the two chambers.

The several states vary widely in the methods by which they insure a different character of representation in the two legislative chambers. The variance is found, however, mainly in the composition of the upper house of the legislature; the composition of the lower house is determined in much the same way in all the democratic states.

Various methods to insure difference found in upper houses only.

As a general rule, the members of the lower chamber are elected directly by the people, the state being divided into electoral districts of a size determined by the population, and the electors of each district voting for their representative. The right to vote, the suffrage, for members of this lower house is commonly liberally extended,

Lower chambers the same.

thus making this chamber most truly popular and representative of the masses of the people in the state.

Upper chambers different.

The characteristics of the composition of the upper houses cannot be dismissed so briefly. In several of the more important states there is no similarity between the methods of choice, and even in those presenting a superficial similarity closer examination reveals vital differences.

England.

In England the composition of the upper house is unique in that, with the exception of four jurists appointed for life by the monarch and of certain church dignitaries, the sole qualification for membership is a peerage. Of the total membership, approximately six hundred, the Scotch peers occupy sixteen seats, the Irish peers twenty-eight seats, and the English peers the remainder. The right of English peers to a seat in the House of Lords is hereditary, bequeathed by one peer to his heir.

Criticism of English system.

This hereditary principle of membership in the upper legislative house is open to severe criticism. No warrant of ability goes with blood-descent. Often the Lords have shown an obstinate blindness to the unalterable course of history and have persisted in trying to stem the flow of liberal government to insure the safety of their own selfish interests, with the result that in recent years the state has taken measures to shear away much of their power, giving them as a body only a right to retard the action of the lower house. And yet strong arguments have been advanced to show that the Lords are capable of being an effective part of the government of England, in that their property is of various kinds, city, country, and commercial, and in that, as they are dependent upon no party or parties for election, their judgment is less liable to be prejudiced by ulterior motives than the judgment of members of the lower house.

The hereditary principle is not used for the determination of the entire membership of the upper house in any other great state. In Austria and Hungary a part of the members

are hereditary nobles, but seated with them and possessed of equal rights are members appointed for life by the monarch. In Spain, together with a proportion of nobles having hereditary membership, are members appointed for life by the monarch, and a certain number of elected members. In Italy, outside of the princes of the blood who possess seats by right, the members of the upper house are all appointed by the monarch subject to the approval of the upper house itself. In Denmark a small proportion of the members is nominated by the monarch and the others are elected.

Other states with hereditary members or members appointed by the monarch.

The upper house (Bundesrath) in the German Empire is of curious composition, representing the conditions under which the German Empire originated. The Bundesrath is composed of members appointed by the princes of the various states in the federation. The members of the Bundesrath are wholly responsible to their respective princes and have no hereditary right to membership. The seats are distributed among the component members of the federal Empire as the votes were distributed in the old German confederation, Bavaria, however, having six seats instead of four.

Germany.

Outside of the states specifically named above, the members of the upper houses, as of the lower, are elected to their seats. Thus the constitutions of France, Switzerland, Belgium, Norway, Sweden, Holland, and the United States provide for the election of members of the upper house.

Other states all have members elected.

In those countries wherein members of both legislative chambers are elected, the logical absurdity already mentioned of making the upper chamber a mere duplication of the lower has led to arbitrary distinctions in the method of election of members, in the constituencies represented by members, in the qualifications of candidates, and in the tenure of office of members. The elections for the lower chamber may be direct, for the upper may be indirect; the constituency

Necessity for elective upper houses of insuring difference between the two houses. Methods.

for the members of the lower chamber may be small, for those of the upper chamber, large; the qualifications of candidates for membership in the lower may be markedly different from those of candidates for the upper; the tenure of office for the members of the lower may be some years shorter than that for the members of the upper.

The members of one chamber may be elected by direct election and those of the other chamber by indirect election. In other words, the voter may be allowed to choose directly the man who shall represent him in the lower chamber, but may not be allowed to vote directly for the one who shall represent him in the upper chamber. In the latter case, he may be allowed to choose an intermediary who in conference with other intermediaries shall select the representative.

Direct and indirect elections.

Such is the system in France. The members of the lower house, or Chamber of Deputies, are chosen by the direct vote of the people; the members of the upper house, the senate, are chosen by indirect vote in the following way: the senators representing each *département* (a *département* is the largest administrative division in France) are chosen by a body composed of officials originally elected by the people, namely, the deputies of the *département*, the members of the general council of the *département*, members of the councils of the various districts (*arrondissements*) of the *département*, and delegates elected by the commune councils, these last named being in the majority. In the United States, until the passage of an amendment to the constitution providing for the election of senators by direct vote (1912), the members of the upper house of the national legislature were chosen by the legislatures of the various commonwealths.

The intent of the system of indirect elections is to remove the election of one branch of the legislature from immediate popular control. Undoubtedly the idea sprang from a distrust of the people. It was the theory that a higher grade of men would be selected for the upper house

Purpose of indirect elections.

if this selection were made by a relatively small body elected by the people. It was supposed that the heat of factional struggle, which among the people at large sometimes results in the selection of unfit men, would be less liable to sway the judgment of the intermediary body.

In practice, however, the system has not worked well. Where political parties are strongly developed, the intermediaries have been pledged delegates of a party. The indirect election strictly carried out tends to lessen the voter's interest in the result, for it is not in human nature to be as interested in the selection of a proxy as in the selection of the representative himself. Again, where a comparatively small body of men are concerned in the final selection of a representative, the chances of corrupt influence are much greater than where all the voters are concerned. It is not easy to bribe the whole electorate. On the whole, then, the tendency has been to introduce the direct system of election. The general argument advanced long ago still holds, that if a voter is fit to choose his proxy, he is equally fit to choose his representative.

Variations in the constituencies.

Variations in the constituencies electing a member to the lower and upper house form a common method of differentiating between the character of the houses. Invariably the constituency electing a member of the upper chamber is very much larger than that electing a member to the lower house. The number of members in the upper chamber is as a result uniformly less than the number in the lower, and, theoretically at least, the members are men of superior prominence and ability. The makers of the constitution of the United States hit upon the happy device of utilizing the upper house to equalize the rights of the component commonwealths of the union in order to offset the great differences in representation in the lower house, due to the differences of population in the various commonwealths. Hence they provided that each commonwealth should be represented by two members in the upper house. Switzerland copied the United States' system, allotting two members of the upper house to

each canton and one to each one half canton. In France the members of the upper house are elected from *départements,* of which there are eighty-six, but the number elected from each *département* varies from two up to ten.

Variations in the qualifications.

Another general method of differentiating between the character of the two houses is to require different qualifications for membership in the upper house from those required for membership in the lower. In all states it is required that members of each house shall be citizens, for it is obvious that aliens, owing no allegiance to the state, should have no voice in the determination of the policy of government. In most states the age limit for membership in the legislative houses is placed above the legal age limit for the exercise of citizenship, and furthermore the age limit for membership in the upper house is higher than that in the lower house. For example, in France, Italy, and Belgium the age limit for membership in the upper house is forty years, for membership in the lower house is thirty years ; the United States, in common with many other states, sets the age limit for the upper house at thirty and for the lower house at twenty-five. In this regard it may be stated as a general rule that eligibility to the upper house requires an age greater than eligibility to the lower house.

Variations due to different tenure of office in the two houses.

Many states have made another marked difference between the two chambers by making the tenure of office longer in the upper than in the lower. Combined with this longer tenure in the upper house is a device whereby a proportion of that chamber shall be renewed at stated periods. Thus in the United States members of the lower chamber are elected for two-year terms, but members of the upper house for six-year terms, with arrangements for the removal of one third of the latter chamber every two years. In France members of the lower house are elected for four years, but those of the upper house for nine years, with renewal of one third every three years. The purpose of this difference is to constitute an upper house of

a more stable and permanent character. A certain continuity of policy is assured which would be inconceivable if the composition of both houses were subject to complete change at similar intervals.

By the adoption of one or more of the above practices, then, states have tried to insure that the upper elective chambers shall not be a mere duplicate of the lower elective chambers. In general, the attempt has been made to create an upper chamber which shall be composed of persons with a broader knowledge of national needs because they are not responsible to so local a body of voters, of persons with superior intelligence and prudence for the weighty deliberations on state affairs, inasmuch as age is universally conceded to ripen and mature the powers of the understanding, and of persons who shall be able to conceive and carry through a continuous policy because their tenure of office is longer.

Summary of methods by which upper house is made different from lower.

And now, briefly, what are the advantages obtained by having two legislative houses rather than one? The first and fundamental advantage lies in the safeguard this second (upper) house provides against hasty, ill-considered legislation. The lower chamber, directly responsible to the people and dependent at frequent intervals upon the people for office, has often proved itself unduly influenced by a transient popular clamor for a measure which mature deliberation would show to be unwise. Such a measure, when passed by the lower house, is not so lightly passed by the upper. In the latter, men with a broader conception of statesmanship, with a tenure of office which may outlast the popular whim, and with an accumulated experience in political affairs, subject the proposed measure to a most careful scrutiny, amend it, or perhaps reject it entirely. Furthermore, it is conceivable that a single house endowed with the enormous power of the legislative function might become tyrannical. Against such a possibility the existence of a second chamber is a safeguard. The upper house from this point of view becomes a guarantee

Advantages of bicameral legislature.

of the liberty and security of the people at large. A third advantage of the existence of a second (upper) chamber lies in the opportunity it gives for the fair representation of elements in the state which in a single popularly elected house might not be represented. Thus in the United States and Switzerland the upper house is used, as has been said, to give an equal representation to the several commonwealths which compose the Union. If our Congress were a single body similar in composition to the present lower house, one thickly populated commonwealth like New York would have an unfair advantage in the legislative over a thinly populated commonwealth like New Mexico. Some states of the world have made provision for the representation of landed or moneyed interests in the upper house by restricting the suffrage for members of such house to persons of high property qualifications. Such a device, however, has tended to create on the part of the nation at large a distrust of the motives of a house so constituted.

Disadvantages of bicameral legislature.

The system of a bicameral legislature is, of course, not wholly without disadvantages. There has at times been strong suspicion that a lower house has passed legislation with the deliberate intention of embarrassing the upper house or of having the upper house reject it. Such cases may occur where the majority in the two houses is of different political complexion, or where the members of the lower house yield to what they realize is a passing popular clamor in order that they personally may be reëlected to their seats. Furthermore, the attainment of legislation is relatively slow. The debates are many times reproduced in the upper house from the lower and no new arguments advanced. Again, the upper houses have proved so conservative that in many cases they have lost the confidence of the people at large.

II. Powers of the Legislative Chambers

In general, the two chambers are endowed under the constitution of the several states with equal powers. Either chamber may introduce legislative measures, either chamber may amend or reject such legislation when introduced, and the consent of both chambers is necessary for the passage of any bill whatever.

Equal powers of the two houses.

One very important exception to the above general rule is to be noted. The constitutions of the various states commonly provide that, in the case of any appropriation bill, — "money bill," as it is commonly called, a bill having to do with the raising or appropriation of money, — the powers of the upper chamber shall be more limited than those of the lower. Usually provision is made that money bills may be introduced only by the lower house, and that the action of the upper house shall be more or less perfunctory. In England, until very recently, it was commonly supposed that the upper house had no possible alternative to passing a money bill, but in 1910 the House of Lords precipitated a memorable conflict by rejecting the budget submitted to it from the lower house, as a result of which conflict the House of Lords was definitely shorn of its power of any finality of action on any bill. In some states, as France, Holland, and Prussia, although the upper chamber may not originate or amend money bills, it has the right to reject them, thus throwing the bills back into the lower house for further discussion. In the United States, although the upper house may not originate money bills, it has the right to amend such bills; and it uses this right to such an extent that its powers in this regard are practically equal to those of the lower house. Two states allow equal rights in money bills to the two chambers; namely, Germany and Switzerland.

Exception: money bills.

Although the imitation of the English system was responsible in the first place for the greater power of the lower house in money legislation, the reasonableness of the arrangement is

responsible for its retention in modern times. The house which is most directly elected by and subject to the people should control the raising and spending of that money which is only procured by the taxation of the people. In the economic life of a state, the question of national finance is most important; it is reasonable that this question, which is of personal interest to every citizen, should be under the control of his direct representative in the national legislature.

The power over money bills and the direct popular election of members has resulted in giving the lower house of the legislative body a predominating influence in government. Whenever there is a conflict between the two chambers, public sympathy is always with that body which it has directly elected and which it has power at relatively short intervals to influence and change Thus in England, France, Italy, and a number of less important states the upper chamber is dominated by the lower. Conditions in the United States and Germany, where the upper house represents the constituent commonwealths of the union, and where almost equal control over the finances is vested in each of the two houses, are different and have resulted in an upper chamber of exceptional power.

Relative position of the two houses in powers.

III. Rules of Procedure in Legislative Business

In a national legislative body where such a mass of business is continually pressing for attention, it has been necessary to devise certain methods of procedure to prevent confusion and interminable delay. The legislatures in all the leading states of the world have bodies of rules in accordance with which business must be transacted. These rules are, of course, made by the legislative bodies themselves and may upon occasion be amended or entirely disregarded. It is impossible to make these rules few in number and simple in character; indeed, Mr. Bryce is authority for the statement that in our own legislature

Need for rules of procedure in legislative business.

experience through one entire session of Congress is necessary before a new member of the House of Representatives can learn the rules of procedure.

There are certain rules which are common to the legislative bodies in many of the leading states which will illustrate in a general way the working of the legislative body.

General rules of procedure.

(1) It is a general rule that a bill be subjected to three "readings" at intervals of time before its final passage. The object of this primarily is to insure the proper consideration of each bill and thus to prevent hasty legislation. In some cases this rule has degenerated into a mere formality whereby only the title and number of the bill are mentioned for the first two times, no serious consideration being given to the substance of the bill by the whole house until its final reading. In other cases, however, notably in the English Parliament, the bill is voted upon at each reading, and its passage through each of the three stages provides opportunity for debate and serious consideration.

(2) Another general characteristic of procedure in legislative bodies is the reference of bills to committees. It has been found impossible to consider in the whole house each of the thousands of bills presented in a session, so that to expedite business numerous standing committees are created to which bills may be referred. In the Senate of the United States, for example, there are over fifty such committees. When a bill is introduced and read (usually by title and number only), it is referred at once to the appropriate committee. The bill may never be referred out of the committee, — most bills never are, — and in this case it dies, but within the committee it receives, theoretically at least, the consideration it deserves. Each committee is thus given extensive power, for upon its report in most instances the house acts. The committee may destroy a bill by an adverse report, may introduce a substitute of a very different character, or may (as indicated above) allow the bill to die by not referring it out to the house.

(3) A third rule commonly found in legislative chambers is one for restricting debate. Experience has shown the advisability of providing the majority of a house with the means of ending discussion and demanding a vote. This is done in our House of Representatives by moving "the previous question," which motion, if carried by a majority of the quorum present, operates to force a vote on the bill under discussion. In the House of Commons any member may make a motion to close the debate, but it is within the discretion of the speaker whether the motion shall be put to vote or not. The fault of the system by which debate may be closed is evident, namely, that it provides the majority with a weapon by which legitimate discussion may be throttled; but the evils of the opposite system, whereby the opponents of a legitimate measure could by endless speeches hold up all the work of the legislature, have led to its adoption. The United States Senate is an exception to this rule. The senators hold fast to the principle of unlimited discussion, but the abuse of the privilege in recent Congresses has led to an insistent demand that some means be devised for expediting business.

IV. The Individual Legislator

The problem confronting a member of the legislative body, whether in the lower or the upper chamber, is very complex. His is a divided responsibility, a responsibility on the one side to the constituency which he represents, a responsibility on the other side to the state for which he is engaged in framing laws. The clash of the interests of the two is often enough very real. Theoretically, it may be argued that these two interests are the same, that the welfare of the whole state is conditioned upon the welfare of each of its constituent parts; but practically, as separate measures are introduced and discussed, each individual member is forced to reconcile as best he can the interests of his particular locality with the interest of the whole state, and vote accordingly.

The position of the member of the legislative.

The difficulty of finding men who truly represent their constituencies has led to a discussion of the advisability of having instructed representatives, *i.e.* representatives instructed upon their election how to vote upon certain issues which it is known are to be introduced in the legislature. The argument for an instructed representative is that his duty is to serve merely as the mouthpiece of those who elected him, to record the collective will of his constituents. Without denying the responsibility of the representative to his constituents, a different view of the position of the representative should be emphasized. A representative is a person elected by his constituents to do what they would do were it possible for all of them to act in his place, to weigh the pros and cons of debate, to consider the bearing of each measure, not alone on his own small district, but on the whole state. A representative is elected to think, decide, and act, for and in the place of the people of his constituency. To bind him by rigid instructions before he takes his place in the legislature, before he hears the arguments on the one side and the other, free from the circumscribed prejudices of his own district, before he estimates the good or evil possibilities for the country at large, is to deprive him of his capacity as *representative* and to make him merely a *delegate*. From this point of view England, France, Germany, Austria, and Switzerland, all favor and provide for uninstructed representatives. The United States, though without definite provision, has tended toward the same ideal.

Instructed *vs.* uninstructed representatives.

Method of Choice, Size of Constituencies, Qualifications of Members, Tenure of Office, etc., of Legislative in Different States

LOWER CHAMBER

Country	Total Membership	Size of Constituencies	Method of Choice	Qualifications of Members	Tenure of Office	Salary
Great Britain	670	Variable: Law 1885 provided in general 1 member for population between 15,000 and 50,000; 2 members for population between 50,000 and 165,000; over 165,000, 3 members, with 1 member additional for each additional 50,000. No readjustment since then: result, great inequality; constituencies ranging from 13,000 to 200,000 sending same number of members	By direct election in districts, the right to vote being confined to adult males on the register of the county or borough	Any male of full age and citizenship, except English and Scotch peers, English, Scotch, and Irish judges, clergymen or priests, government contractors, and holders of various specified offices	5 years	£400 a year. Speaker has £5000 a year

Method of Choice, Size of Constituencies, Qualifications of Members, Tenure of Office, etc., of Legislative in Different States (*Continued*)

UPPER CHAMBER

Country	Total Membership	Size of Constituencies	Method of Choice	Qualifications of Members	Tenure of Office	Salary
Great Britain	(1913) 629 as follows: Peers of Blood Royal, 3; Archbishops, 2; Dukes, 22; Marquises, 24; Earls, 125; Viscounts, 48; Bishops, 24; Barons, 353; Scotch Representative Peers, 16; Irish Representative Peers, 28		Mainly hereditary; elected or appointed members are peers or high dignitaries	1. Lords temporal The peerage Scottish peers send 16 representatives, elected after each general election to sit until Parliament is dissolved; Irish peers elect 28 representatives for life. Lords of appeal, judges appointed by the sovereign, not more than 4 in number, have dignity of baron for life 2. Lords Spiritual, consisting of Archbishop of Canterbury, Archbishop of York, and 24 bishops according to seniority	Life, except for Scottish elected peers, who sit until Parliament is dissolved	None

METHOD OF CHOICE, SIZE OF CONSTITUENCIES, QUALIFICATIONS OF MEMBERS, TENURE OF OFFICE, ETC., OF LEGISLATIVE IN DIFFERENT STATES (*Continued*)

LOWER CHAMBER

COUNTRY	TOTAL MEMBERSHIP	SIZE OF CONSTITUENCIES	METHOD OF CHOICE	QUALIFICATIONS OF MEMBERS	TENURE OF OFFICE	SALARY
France .	592	Each *arrondissement* sends 1 deputy if its population is less than 100,000 and sends an additional deputy for each additional 100,000 population or fraction thereof	Direct election, each voter voting for one candidate, a method of proportional representation which has been much favored by the Chamber of Deputies, and the counting was passed by the Chamber of Deputies Nov. 8, 1909, and only defeated by the influence of the Premier; was passed again July 10, 1912, but was strongly opposed by the ministry	Citizenship Age, over 25 Residence, not less than 6 months in one town or commune No member of a family that has reigned in France is eligible	4 years	$3000 per annum

METHOD OF CHOICE, SIZE OF CONSTITUENCIES, QUALIFICATIONS OF MEMBERS, TENURE OF OFFICE, ETC., OF LEGISLATIVE IN DIFFERENT STATES (*Continued*)

UPPER CHAMBER

COUNTRY	TOTAL MEMBERSHIP	SIZE OF CONSTITUENCIES	METHOD OF CHOICE	QUALIFICATIONS OF MEMBERS	TENURE OF OFFICE	SALARY
France	300	Elected from the *départements*, the number from each *département* varying from 2 to 10, except from certain territories and colonies, which have 1 each	Indirect election, by (1) body composed of the deputies of the *départements;* (2) the members of the general council of the *département;* (3) members of the councils of the *arrondissement;* and (4) delegates elected by the commune councils	Citizenship Age, over 40. No member of a family that has reigned in France is eligible	9 years, one third retiring at the end of each 3 years	$3000 per annum

METHOD OF CHOICE, SIZE OF CONSTITUENCIES, QUALIFICATIONS OF MEMBERS, TENURE OF OFFICE, ETC., OF LEGISLATIVE IN DIFFERENT STATES (*Continued*)

LOWER CHAMBER

COUNTRY	TOTAL MEMBERSHIP	SIZE OF CONSTITUENCIES	METHOD OF CHOICE	QUALIFICATIONS OF MEMBERS	TENURE OF OFFICE	SALARY
Germany	397, divided as follows: Prussia 236 Bavaria 48 Saxony 23 Württemberg 17 Baden 14 Hesse 9 Mecklenburg-Schwerin 6 Saxe-Weimar 3 Mecklenburg-Strelitz 1 Oldenburg 3 Brunswick 3 Saxe-Meiningen 2 Saxe-Altenburg 1 Saxe-Coburg-Gotha 2 Anhalt 2 Schwarzburg-Sondershausen 1 Schwarzburg-Rudolstadt 1 Waldeck 1 Reuss-Greiz 1 Reuss-Schleiz 1 Schaumburg-Lippe 1 Lippe 1 Lübeck 1 Bremen 1 Hamburg 3 Alsace-Lorraine 15 397	Originally 1 member for each 100,000 population, but there has been no reapportionment for many years and the electoral districts have become very unequal (*e.g.* Berlin, population 1,600,000; representation, 6)	By direct universal suffrage, secret ballot, voters citizens at least 25 years old	Citizens over 25 years old	5 years	$750 for the session, $5 being deducted for each day's absence. Free passes on railroads during season

Method of Choice, Size of Constituencies, Qualifications of Members, Tenure of Office, etc., of Legislative in Different States (*Continued*)

UPPER CHAMBER

Country	Total Membership	Size of Constituencies	Method of Choice	Qualifications of Members	Tenure of Office	Salary
Germany	58, divided as follows: Prussia 17 Bavaria 6 Saxony 4 Württemberg 4 Baden 3 Hesse 3 Mecklenburg-Schwerin 2 Saxe-Weimar 1 Mecklenburg-Strelitz 1 Oldenburg 1 Brunswick 2 Saxe-Meiningen 1 Saxe-Altenburg 1 Saxe-Coburg-Gotha 1 Anhalt 1 Schwarzburg-Sondershausen 1 Schwarzburg-Rudolstadt 1 Waldeck 1 Reuss-Greiz 1 Reuss-Schleiz 1 Schaumburg-Lippe 1 Lippe 1 Lübeck 1 Bremen 1 Hamburg 1 Alsace-Lorraine – 58	Represent individual units of the federal state Alsace-Lorraine is represented by 4 commissioners with no vote, said commissioners are nominated by the imperial lieutenant over the crown territories	Appointed by the sovereigns of the units of the federal state	Determined by sovereigns of individual units of the federal state	Appointed and removed at will by the sovereigns of the individual units	Same as for members of the lower house

METHOD OF CHOICE, SIZE OF CONSTITUENCIES, QUALIFICATIONS OF MEMBERS, TENURE OF OFFICE, ETC., OF LEGISLATIVE IN DIFFERENT STATES (*Continued*)

LOWER CHAMBER

COUNTRY	TOTAL MEMBERSHIP	SIZE OF CONSTITUENCIES	METHOD OF CHOICE	QUALIFICATIONS OF MEMBERS	TENURE OF OFFICE	SALARY
Italy . . .	508	1 to each electoral district, said districts averaging about 65,000 population	Direct election, voters must be citizens over 21 years of age, with certain educational qualifications, or paying a certain tax In the elections, the number of qualified voters is about 30% of the male population over 21 years of age, and of this 30% about 60% actually vote	Qualified citizens at least 30 years of age Government officials and ecclesiastics are not eligible	5 years	None Free passes on railways in Italy and on certain lines of steamers

METHOD OF CHOICE, SIZE OF CONSTITUENCIES, QUALIFICATIONS OF MEMBERS, TENURE OF OFFICE, ETC., OF LEGISLATIVE IN DIFFERENT STATES (*Continued*)

UPPER CHAMBER

COUNTRY	TOTAL MEMBERSHIP	SIZE OF CONSTITUENCIES	METHOD OF CHOICE	QUALIFICATIONS OF MEMBERS	TENURE OF OFFICE	SALARY
Italy . . .	(1908) 323	Number which may be appointed by king is not limited	Nomination by the king Princes of the blood have the right to membership upon the attainment of their majority	Over 40 years of age and of special distinction in any of several branches	Life	Same as for lower house

METHOD OF CHOICE, SIZE OF CONSTITUENCIES, QUALIFICATIONS OF MEMBERS, TENURE OF OFFICE, ETC., OF LEGISLATIVE IN DIFFERENT STATES (*Continued*)

LOWER CHAMBER

COUNTRY	TOTAL MEMBERSHIP	SIZE OF CONSTITUENCIES	METHOD OF CHOICE	QUALIFICATIONS OF MEMBERS	TENURE OF OFFICE	SALARY
United States	435 divided among the commonwealths on a basis of population	1 representative for each 212,407 population A reapportionment is made after each census	Direct election by qualified voters in single electoral districts	Qualified citizen, 25 years of age, 7 years a resident of the United States, and a resident of the commonwealth from which chosen	2 years	$7500 a year and traveling expenses at 20¢ per mile Speaker has salary of $12,000 a year

METHOD OF CHOICE, SIZE OF CONSTITUENCIES, QUALIFICATIONS OF MEMBERS, TENURE OF OFFICE, ETC., OF LEGISLATIVE IN DIFFERENT STATES (*Continued*)

UPPER CHAMBER

COUNTRY	TOTAL MEMBERSHIP	SIZE OF CONSTITUENCIES	METHOD OF CHOICE	QUALIFICATIONS OF MEMBERS	TENURE OF OFFICE	SALARY
United States	96	2 members from each commonwealth irrespective of the size or population of the commonwealth	By direct election by qualified voters	Qualified citizen, 30 years old, 9 years a resident of the United States, and resident in the commonwealth from which chosen	6 years	Same as for lower house, but the Vice President of the United States acts as presiding officer

CHAPTER V

THE EXECUTIVE

Strict interpretation: executive as administrative agent of legislative.

THE executive is primarily that organ of government which is responsible for putting the laws into effect and securing their due operation throughout the state. Thus, primarily, the executive is the administrative agent of the legislative.

I. EXECUTIVE AS AGENT OF THE LEGISLATIVE

The duties and functions of the executive when acting in his primary capacity as the administrative agent of the legislative are varied and important. The executive is responsible for the collection of all public moneys, whether from internal taxation or from tariff on imports, and for the expenditure of such moneys; for the relations of the state with all other states in the family of nations; for the maintenance of the national defense by the use of the army and navy if needful; for the preservation of civil rights to individual citizens by the use of the police power if necessary; for the utilization of the natural resources of the country in a manner which shall most benefit the whole body of the citizens of the state; for the efficient supervision of all agencies affecting the general interests of all citizens, as agencies of transportation, communication, and the like; for the insurance of equitable relations between the great bodies of capital and labor, that the general prosperity of business may be forwarded at the same time that the rights of individuals are safeguarded. Such are among the most important functions of the executive organ acting as the administrative agent of the legislative in a modern democratic state.

Duties and functions of executive as administrative agent of legislative.

The personnel of the executive department charged with administering the laws of the country is large in number. All members of the army and navy, all the officials of the various departments of state, as the State Department, the Treasury Department, the Department of the Interior, etc., all diplomatic and consular representatives, all revenue collectors of whatever kind, all of the thousands of assistants, clerks, and the like necessary for the subordinate duties in the various departments, — all these are a part of the executive in that they are concerned, however humbly, with the administration of the laws of the state. In its personnel the executive far outnumbers the other branches of government.

Personnel of executive necessary to act as administrative agent of legislative.

For the headship of this great department experience has proved that it is wise to have a single person. For legislative deliberation many heads are better than one, but for executive action, the requirements of unity, resolution, and at times quickness of decision are best served by one head. Thus we find a king, an emperor, a czar, a sultan, a president, or the like at the head of each of the governments in the civilized world to-day. Switzerland presents the single notable exception to this general rule in that it has an executive head composed of a council of seven persons, each sharing the actual executive power equally with his colleagues.

Unity advisable for executive head.

A distinction should be observed between those states in which the executive head is actually in control of his functions, and those in which the executive head is only nominally in control, his functions being actually determined by others. In the United States the executive head, the President, is an actual executive. He may receive advice and may consult with many persons both in and out of official life, but the final decision and all the responsibility rest with him. In England, France, and Italy, on the contrary, a body of ministers determines the policy and

Nominal and actual executive heads.

dictates the action of the executive head. The executive head in these states is still a single person, and all executive action must be taken nominally by him, but in actual fact decision and responsibility rest upon the body of ministers.

Appointment of assistants to executive head.

To cope with the vast amount of business included in the administration of the laws, a correspondingly vast number of officials is necessary. The selection and supervision of these officials in a large measure fall upon the executive head. Thus he appoints diplomatic representatives, postmasters, officers of the army and navy (although these appointments are now largely a matter of regular promotion), revenue agents, and the like.

In various countries the abuse of the appointing power in its exercise to repay political debts, thus ousting worthy employees of the state and replacing them with inexperienced persons, has led to the establishment of a civil service system, whereby a large number of positions in the service of the state are open to merit as shown by competitive examinations. Thus, in the United States, certain grades of postmasters and a large proportion of the clerks engaged in executive departments hold their positions secure from political changes. The number and importance of the offices remaining under the direct appointing power of the President in this country, however, still make this power one of the most important he wields for the good or evil of the administration.

Responsibility of executive head for the work done by his appointees.

It is not to be understood that the responsibility of the executive head ends with the appointment of a subordinate in the department. If the governor-general of India is at fault in any matter, the responsibility falls upon the English ministry to whom he is subordinate; if the French representative in Tangiers makes trouble for his nation, the attack in France is made upon the ministry conducting the government; if our foreign minister to Mexico involves us in needless difficulties with that country, our criticism is directed against our President. The share of the executive head is thus a very real one.

II. Executive Functions Distinct from those as Agent for the Legislative

The chief executive has functions of the greatest importance entirely aside from those which he performs in his primary capacity of administrative agent for the executive. In actual practice, the duties of the executive as administrative agent of the legislative, important as they are, are largely performed in routine manner by the army of assistants in the executive branch of government, but the powers which we shall outline below are exercised by the chief executive himself.

Executive head has other functions than those of administrative agent for legislative.

In his relations with the legislative the chief executive commonly has means of suggesting, initiating, or influencing legislation on matters of general concern. The means by which this end is accomplished differ radically in different states.

Function of recommending legislation.

Under the English system the ministry, which is the *actual* executive head, is itself a part of the dominant party in the House of Commons, itself frames legislative measures, superintends their enactment by the lower chamber, and influences in one way or another the considerations of the upper chamber.

In Germany, where each house of the legislative body has equal rights in the matter of initiating legislation, the executive head, the Emperor (who is likewise king of Prussia), can initiate measures in the upper house (Bundesrath) through those Prussian members who are appointed by and are directly responsible to him.

In France the executive head (the President) is invested with the power to initiate legislation directly, but comparatively seldom avails himself of the privilege. There the real power is in the hands of the ministry, and it is the part of this ministry to prepare, introduce, and defend legislative measures.

In the United States neither the executive head (the President) nor any member of his cabinet is a member of the legisla-

tive, nor has the executive head any direct representative in the legislative body. He may, however, have an important part in initiating and influencing legislation in various ways. For example, under the constitution he is required to give from time to time "to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient." He fulfills this requirement by regular messages delivered to Congress at the beginning of each of its regular sessions and by such special messages as he may deem needful throughout the sessions. The amount of influence which these messages have upon the legislative body may be great or little, depending upon the political relations between the executive and the legislature, the wisdom of the suggestions, and the personal aggressiveness with which the suggestions are followed up. Furthermore, although the President has no accredited representatives in the Congress, he always has friends of his own party who will introduce measures in just the form he desires.

Veto power.

In most states a very important legislative power in the hands of the executive head consists in his constitutional right to veto any legislative enactment. Such a veto is commonly under the constitution not final; in other words, provision is made for the passage of legislation over the veto of the executive head, generally by some unusual majority in the legislative chambers. In the United States, for example, the President must give his reasons for his veto, and the Congress must reconsider the measure in the light of the presidential veto, a two-thirds majority in each house serving to pass the measure in spite of the veto. In Germany the executive head of the Empire has no veto power, but in actual fact, through his position as king of Prussia, he has in his representatives in the Bundesrath a very effective veto on the most important classes of legislation, for the constitution provides that the negative vote of the Prussian contingent in the Bundesrath defeats (1) any amendment to the constitution, or (2) any change in the laws concerning taxes, or army, or

navy. The executive head of France has no power of veto upon the laws, but may require the reconsideration of proposed measures. In England the veto of the executive head is absolutely final, thus forming an exception to the general rule, but as a matter of fact the nominal executive head (king) never uses the veto, and the actual executive head (ministry) is the proposer and sponsor of all measures passed by the legislative body. The veto, therefore, has practically ceased to exist in English government.

Another function of the executive head which is legislative in character is the power to make and put into effect such ordinances as are necessary for the execution of legislative measures. Under this power the executive head actually drafts a very considerable amount of legislation. In the United States commonly the legislative measures are framed so as to cover all possible questions and to provide the means for their own proper execution; and yet all the regulations for the army and navy, all the rules governing the postal service, customs service, internal revenue service, civil service, consular service, are ordinances drawn up and promulgated by the executive. In foreign states, where legislative acts usually embody only the essentials, a much greater burden of ordinance preparation for the proper execution of the enactments devolves upon the executive, and this power is correspondingly more important.

Ordinance power for effecting the operation of laws.

In most states the executive head is invested under the constitution with certain rights relative to convening, adjourning, or dissolving the legislative body. In the United States, and in many of the republics patterned after it, the regular sessions of the legislative body are provided for by the constitution or by statute, and the power of the executive head is confined to convening the legislative in extraordinary session for special business. In other states, especially those in which a monarchical form has been retained, the executive head issues the summons to convene the legislative body and formally opens each session.

Power over meeting of legislative body.

Thus, in England, Parliament is always summoned by the king (at the direction of his ministry) and opened with a formal address from the throne (prepared or carefully revised by the ministry). The Emperor of Austria is invested with the power to convene, adjourn, or dissolve the legislative body. The Emperor of Germany is invested with the power to summon and adjourn the legislative chambers, and, with the consent of the Bundesrath, to dissolve them if occasion warrants. In these states, however, the exercise of the above power by the executive head is carefully guarded by various provisions to prevent an arbitrary use of it to defeat necessary legislative action. Thus, in Germany and France, the executive head may dissolve the lower house only with the consent of the upper house, and the executive head is required to convene a new legislative body within a specified time. In other states the legislative head, either as a result of statute or of necessity (as for the passing of a budget to carry on the government), must convene the legislature not less than once a year.

Power in international relations.

In the relations between states, *i.e.* in international relations, the executive head becomes the representative of the whole state. Through this executive head all communications to and from other states are transmitted. The powers of the chief executive in the matter of treaties and commercial agreements with foreign states are very great. Usually the consent of one or both houses of the legislative body is necessary to ratify a treaty negotiated by the chief executive, but in a few states, as in England, the legislative body has no share except to pass such measures as will make the provisions of the treaty effective. In the United States the Senate has claimed and exercised the right to amend treaties negotiated by the executive head as well as to ratify or reject them, and the House of Representatives reasonably shares in the ratification, rejection, or amendment of certain classes of commercial agreements, as reciprocity bills.

The chief executive in all states is in supreme command of the military forces of the state. His right to distribute the

forces both of the army and of the navy in such manner as seems most suitable, to choose officers, and, in case of war, to plan and carry through such operations as will bring ultimate success to the state, is unquestioned. The unanimous agreement of the great states of the world in concentrating the military forces of the state in the hands of the chief executive alone is due to the necessity of having perfect unity in the operations of such forces.

Power to command military forces of the state.

Together with the supreme command of its military forces, the executive head is in some states, as England, invested with the power to declare war. In most states, however, the consent of one or both houses of the legislature is necessary to a declaration of war. Thus, in Germany the Emperor has to have the consent of the Bundesrath, and in France the President must have the consent of both the Senate and the Chamber of Deputies. In the United States the right to declare war is vested in the Congress.

Power in connection with the declaration of war.

Lastly, in most states the executive head is invested under the constitution with the power to pardon any one convicted by the courts of the state. Even under a most efficient system of administering justice it is impossible to be sure that no mistakes are committed; the pardoning power exists primarily for the purpose of correcting such mistakes as may be discovered.

Pardoning power.

Under some constitutions cases of impeachment or convictions for treason are specifically excepted from the operation of the executive pardon. The purpose of these exceptions is to prevent the possibility of an executive conniving with officials in high crimes against the state and using the pardoning power to shield himself and his accomplices from the results of conviction.

From the preceding paragraphs the great importance of the chief executive is manifest. He is the chief of that department which is the agent of the legislative body in the vast and complicated business of administering the laws of the state; he has

an important part in the actual framing of legislation, either by direct or indirect initiative of measures in the legislative body, or by his influence upon the legislative body, by his veto, or by the ordinances made to carry into effect measures passed by the legislative body; he has powers relative to the convening, adjourning, or dissolution of the legislative body; he has extensive power in international relations, as in the framing of treaties or commercial agreements; he has supreme command and disposition of all the military forces of the state; he has the right to extend pardon to any person convicted in the courts of the state. The great powers of the executive head make correspondingly important for us a knowledge of the methods of selection of such head, his tenure of office, and the methods of procedure in undertaking the complicated duties of the position.

Summary of functions and powers of executive head.

III. Selection of Chief Executive

For the selection of the nominal head of the executive department two methods are used in modern states: the hereditary method and the elective method.

Methods of selecting executive head.

The hereditary method is a relic of the monarchical government of previous ages. By this method the person of the nominal ruler is determined by blood relationship, usually by direct descent from a previous monarch, and the selection in many states is confined to males. In all democratic states to-day the nominal ruler thus selected has his powers as executive head carefully hedged about by constitutional restrictions. In England, for example, the hereditary monarch has long since ceased to be more than a nominal executive head, all the executive power being in the hands of his ministry; in Germany the Emperor, without the consent of the upper house of the legislative body, can accomplish very little, although his position, by reason of his power as king of Prussia and his right to appoint a chancellor (prime minister)

Hereditary method.

of the Empire responsible only to himself, is one of greater power than that of the English monarch; in Italy the king is now completely under the control of his ministry, though it is said that the monarch's personal influence is very great.

The methods of selection by election vary, as did the selection by election of members of the upper house of the legislative body, in that in some states the executive head is elected directly by the people and in other states is elected indirectly by an intermediate body. The method of direct popular election is not used in any of the great modern states which have been most under discussion; it is confined at present to a few important South American republics, as Brazil and Peru. As an actual fact, however, the method of indirect elections in the United States has, under party influence, become a species of direct election, for the members of the intermediate body charged with selection are elected by parties and are under party pledge to cast their votes for a man previously named. So obvious is the uselessness of this intermediary body in the United States under present conditions that in 1913 the executive head proposed that measures be taken to provide for a system of direct election.

Elective method: direct election.

There is much to be said in favor of the direct election of the chief executive, the chief arguments being that this method is more nearly the ideal of modern democracy, and that an executive thus chosen is more likely to retain the confidence of the people at large. Those opposed to the selection of the executive head by direct election point to the great disturbance to the state which such direct election involves, and emphasize the proneness of the mass of the people to be swayed by demagogues.

There are two methods by which the executive head is chosen by indirect election: first, his selection by an intermediate body elected for the special purpose by the people of the state; and second, his selection by the legislative body.

Elective method: indirect election.

The former of these methods is the system used in the United

States and in certain American republics whose governments are modeled upon that of the United States, as Chile and the Argentine Republic. The advantages claimed for this system are that the final choice for so important an official in the government is restricted to a small body of select men, and that the excitement and turmoil attending a popular election are avoided; but it is a fact that, where the system has not, under party influences, become practically direct (as in the United States), the opportunities for intrigue and corruption in the small body are much increased.

The selection of the executive head by the legislative body is the method of indirect election used in France. In that state the two chambers of the legislature meet in joint session (called the *national assembly*) at Versailles and ballot for the President of the Republic. The advantages claimed by the defenders of this method of selection are: (1) that in the legislative body are those men acquainted with the nature of the state problems and best fitted to choose an executive head to cope with these, and (2) that the choice of the executive head by the legislative body insures a cordial coöperation between the executive and legislative branches of government in the many and great tasks they jointly perform. Some very serious objections offset these, however. The possibility of intrigue where the head of one powerful branch of government is dependent upon the will of another branch of government is great; an ambitious and unscrupulous candidate might yield to the temptation to gain the office or to retain the office by promises of political rewards or influence to members of the legislative body. Furthermore, to put the burden of selecting the executive head upon the legislative body is to impose upon that body a task which is not primarily its function and which is certain to interfere, for a time at least, with legislative procedure. During the period when such a selection is in progress, ordinary necessary legislation is certain to be blocked or strongly affected; in an especially exciting contest for the executive officer, the time lost may be very considerable.

In the case of elected executive heads, whether elected directly or indirectly, the tenure of office is commonly short, the idea being to keep the control of this office in the hands of the people or their representatives. In the United States the President is elected for four years and is eligible for reëlection; in France the term is seven years and the President is eligible for reelection; the President of Chile is chosen for five years and is not eligible for reëlection. In general, the constitutions of the various states have been drawn with the purpose of making the tenure sufficiently long to insure a firmness and continuity of policy and stability of administrative system on the part of each individual executive head. Were the tenure of office very short, as, for example, one year, a chief executive might be unwilling to risk the ill will of the people in pursuit of the policy he deemed right in view of the fact that he had to give up his position so soon, or he might hesitate to attempt some great undertaking in view of the burden he would have to pass on to his successors. On the other hand, were the tenure of office very long, as, for example, ten or fifteen years, the temptation would be correspondingly great for an unprincipled man to use all the means which his high position yields to gratify his ambitions and perpetuate his power indefinitely. In general, democratic states are in agreement upon a term of from four to seven years.

Tenure of office of elected executive heads.

The question of eligibility for reëlection is involved in this consideration. In favor of reëligibility it may be said that the state ought to have the opportunity to continue the services of an executive head who has been notably successful in the conduct of his office. Yet it is true, on the other hand, that the prospect of reëlection may have a harmful effect on the activities of the executive head, as where he is restrained from certain procedure for fear of incurring the displeasure of the electorate or where he yields to popular pressure in some matter of doubtful expediency that he may

Eligibility for reëlection of elected executive heads.

gain the favor of the electorate. In the United States the lack of any reference in the constitution to eligibility of Presidents for reëlection has permitted a number of chief executives to succeed themselves, but the custom established by the first President of restricting the number of terms to two has not up to this time been broken. In Mexico, where the term of the executive head is fixed at six years and the question of reëligibility not mentioned, one man (Diaz) was continuously in power from 1884 to 1910. In France a President has rarely succeeded himself, although he may do so under the constitution.

Nominal and actual executive heads.

In the last few paragraphs we have been considering the selection and tenure of office of the *nominal* executive heads of the states. It has already been emphasized that in some states the *nominal* executive head is not the same as the *actual* executive head. We should, therefore, include in our consideration an examination of the actual executive heads in such states.

The actual executive head differs from the nominal executive head most notably in England, France, and Italy.

England: cabinet system.

The system whereby the actual executive powers reside in a body of ministers rather than in the nominal executive head originated in England (where the body of ministers is known conventionally as the *cabinet*) and has attained its most typical form there. Like many other political institutions, as the bicameral legislature, the cabinet system is the product of evolution and not of deliberate invention.

The cabinet system developed out of the king's privy council of the eleventh century. This privy council, from the eleventh to the seventeenth century a powerful and important body, constituted an advisory board for the sovereign. Later kings, believing the privy council too large for confidential consultation, consulted only with a few of its leading members and thus developed an inner committee of the privy council, originally scornfully referred to as the *cabinet*, or the

cabinet council. From this cabinet has descended directly the present cabinet. The privy council still exists, but all of its powers are in the hands of this select committee known as the cabinet. The cabinet has no recognized legal status; the king does not meet with it; it has no secretary and keeps no records of its deliberations; it is summoned by its head, the prime minister. It still remains, legally, a select committee of the privy council, and has no legal authority except by virtue of its being a part of the privy council.

The main features of the cabinet system as it exists at present in England are: (1) the appointment by the king of a prime minister from the dominant party in the House of Commons; (2) the formation by the prime minister of a cabinet to be associated with him and composed entirely of leaders of the dominant party, usually members of the legislative body; (3) the complete and immediate responsibility of the cabinet to the popular chamber of the legislature; and (4) the assumption by the cabinet of all the functions of the executive in government and a direct participation by the cabinet in the functions of the legislative. The English cabinet acts as a body in initiating, defending, and urging legislation in the Parliament; and the members of the cabinet individually head the various executive departments which administer the laws of the state. So long as the policies and acts of the cabinet command majorities in the House of Commons, just so long the cabinet remains in power; when defeated in the Commons on a vote implying lack of confidence, one of two courses is open to it, either to resign or to dissolve Parliament and seek support in the members of a newly elected House of Commons.

France: cabinet system.

The English system has never developed in France into the typical form in which it exists in England, owing largely to the fact that the party system in France has had a different development. The success of the English system is largely due to the fact that for generations only two great political parties have elected representatives

to the House of Commons, one of which parties has always been able to command a majority of votes. In France, however, a large number of political groups exist in the Chamber of Deputies, and these groups are constantly shifting in membership and numbers, no one group under ordinary circumstances possessing a majority of votes. Thus, whereas in England the cabinet is all of one political party, in France the cabinet is a mixture of several political groups in the endeavor to satisfy a majority of the chamber. The cabinets in France are thus always compromise or coalition cabinets and are subject to sudden loss of legislative support on any shifting of members of the coalition. Ministries rarely last long in France, the average in the history of the present government being less than a year. The results upon the continuity of policy and the stability of government are necessarily harmful. In its general features, outside of the above conditions, the system resembles the typical system in England; the cabinet as a whole participates in the legislative functions, and, by the appointment of its members at the head of the executive departments, administers the laws of the state. The presidency is largely a ceremonial office, none of its acts being legal without the approval of the ministry.

Italy: cabinet system.

Conditions in Italy resemble those in France, in that the political groups are many and varied. The distinctions between them are more consistently maintained, however, so that there is less possibility of fusion or coalition and consequently more difficulty in choosing a ministry which can keep the support of the chamber. The king has theoretically somewhat more liberty in his choice of a cabinet, and somewhat more influence over it when chosen, than is the case in England, but in actual practice the leaders of the majority are forced upon him and the responsibility of the ministers to the lower chamber of the legislature is unquestioned. The main features of cabinet government exist here as in France. The executive acts of the king are completely controlled by his ministry.

The system of cabinet government has decided advantages which have appealed to states abroad. The close and harmonious coöperation secured between the executive and the legislative branches of government, and the ultimate dependence of the actual executive upon the consent of the popularly elected house, have seemed to insure unity and facility in the operation of government on the one hand and the responsibility of the actual executive to the people on the other. The system is now established in Belgium, Holland, Norway, Sweden, and Denmark, in addition to the states which we have examined more in detail. On this side of the ocean the conspicuous example of the United States has operated to cause imitation of the essentials of its system rather than that of England.

Spread of cabinet government.

IV. Organization of Executive Department

Emphasis has been laid upon the quantity and importance of the business which the executive is called upon to handle. The efficient performance of this business can be accomplished successfully only by careful organization and regular procedure. The "red tape," which is so often blamed for delay, is but a necessary part of the procedure; where in one case it may cause temporary and apparently needless delay, in a hundred it is responsible for the orderly and rapid dispatch of business.

Organization of executive to handle mass of business.

The most effective method of planning the work of the executive is to divide it into a number of parts. The duties of the executive, both in his administrative and executive capacity, fall naturally into several categories; there is, for example, his military duty, his naval duty, his duty in connection with foreign affairs, his duty in connection with internal affairs, his duty relative to the public moneys, etc. When various divisions are made, the executive assigns to each department

Division of work: department heads.

a head or chief whose particular province it is to superintend the performance of the executive duties of that department. Thus in England the executive duties are distributed among as many as twenty departments; in France among twelve; in Germany among eight (or fifteen if we include certain imperial bureaus); in the United States among ten, headed respectively by the Secretary of State, Secretary of the Treasury, Secretary of War, Attorney-general, Postmaster-general, Secretary of the Navy, Secretary of the Interior, Secretary of Agriculture, Secretary of Commerce, and Secretary of Labor.

Double duty of department heads.

The heads of these various departments are appointed by the chief executive and act not only as the directing heads of their departments, but also as an advisory body to the chief executive. In states such as England, France, and Italy the sovereign or president must choose his advisers from among the leaders of the majority in the legislature, and the nominal executive has to approve the policies of his ministers. In the United States, however, and other states similarly governed, the executive head is free to choose whatever men he wishes to head the various departments, and is likewise free to accept or overrule their advice.

Further subdivision in departments.

The process of subdivision in the business of the executive goes still further, each department being divided into bureaus headed by a commissioner responsible to the chief of the department. For example, the Department of the Interior in the United States contains among others the Bureau of Public Lands, the Pension Bureau, the Patent Bureau, the Bureau of Indian Affairs, the Census Bureau, the Bureau of Education, each headed by a commissioner taking his title from his office, as the Commissioner of Public Lands, the Commissioner of Patents, the Commissioner of Education.

This process of division and subdivision into a hierarchy of officials to perform the executive duties in no way removes the responsibility from the actual executive, but it does greatly

simplify his labor. The details of administration are handled by subordinates experienced in, and, theoretically at least, especially qualified for, such work. The time of the actual executive is left free to use in the broader and more complicated problems of his office, such as the policies of the state in its relation to other states, the policies of the executive in his manifold and complex relations with the legislative body, the consideration of measures submitted to him from that body for approval or of measures and suggestions to be submitted by him to that body for its deliberations.

Advantages of division in leaving executive head free from details of executive business.

1

Qualifications, Method of Choice, etc., of Elected Executive Head in Different States

State	Title	Qualifications	Method of Choice	Tenure of Office	Eligibility for Re-election	Salary	Remarks
Argentine Republic	President of the Argentine Nation	Argentine citizen by birth; Roman Catholic; qualifications of senators (namely, at least 30 years of age and in the enjoyment of an annual income of at least 2000 pesos ($2000))	Indirect choice is made by an electoral college. "The capital and each one of the provinces shall appoint, by direct vote, an electoral college, consisting of twice as many members as the number of senators and deputies constituting their respective representation in Congress." (Modern Constitutions — Dodd's translation)	6 years	Eligible after an intermission of one term	$30,000 a year. Constitution provides that salary shall not be changed for a president during his term of office	1. Present President elected March 12, 1910, Dr. Roque Saenz-Pena. 2. The development of political parties has made the indirect election practically direct, as in the United States

QUALIFICATIONS, METHOD OF CHOICE, ETC., OF ELECTED EXECUTIVE HEAD IN DIFFERENT STATES
(*Continued*)

STATE	TITLE	QUALIFICATIONS	METHOD OF CHOICE	TENURE OF OFFICE	ELIGIBILITY FOR RE-ELECTION	SALARY	REMARKS
Brazil	President of the United States of Brazil	Native of Brazil; in the enjoyment of political rights; over 35 years of age	Divided election by an absolute majority of votes "If no one of those voted for shall have received an absolute majority of votes, Congress shall elect, by a majority vote of those present, one of the two persons who have obtained the greatest number of votes in the direct election. In the case of a tie, the candidate of greater age shall be considered elected." (Const. transl. by Dodd)	4 years	Not eligible for a succeeding term	Fixed by the Congress in the preceding presidential term	1. Present President, Hermes da Fonseca, elected 1910

QUALIFICATIONS, METHOD OF CHOICE, ETC., OF ELECTED EXECUTIVE HEAD IN DIFFERENT STATES
(*Continued*)

STATE	TITLE	QUALIFICATIONS	METHOD OF CHOICE	TENURE OF OFFICE	ELIGIBILITY FOR RE-ELECTION	SALARY	REMARKS
Chile	President of the Republic of Chile	Birth in the territory of Chile; qualifications of deputies (namely, enjoyment of political rights, annual income of 500 pesos ($180)); age at least 30 years	Indirect. "Art. 54. The President of the Republic shall be elected by direct popular vote. The number of electors shall be three times the total number of deputies chosen by each department. . . . "Art. 59. The person receiving a majority of all the votes shall be proclaimed President of the Republic. "Art. 60. In case the votes are so divided that no one obtains a majority, Congress shall elect one of the two persons who have obtained the highest number of votes." (Const. transl. by Dodd)	5 years	Not eligible for the succeeding term	$4000 a year and an entertainment allowance of $2750 a year	1. Present President, Ramon Barros Luso, elected Dec. 23, 1910

QUALIFICATIONS, METHOD OF CHOICE, ETC., OF ELECTED EXECUTIVE HEAD IN DIFFERENT STATES
(*Continued*)

STATE	TITLE	QUALIFICATIONS	METHOD OF CHOICE	TENURE OF OFFICE	ELIGIBILITY FOR RE-ELECTION	SALARY	REMARKS
France	President	Members of families that have reigned in France are ineligible	Indirect, chosen by an absolute majority of votes of the Senate and Chamber of Deputies united in National Assembly	7 years	Reëligible	$120,000 a year and $120,000 a year for expenses	1. Although the qualifications are not stated, it is obvious that the "National Assembly" would choose no one who was not a French citizen with political rights and of mature age. 2. Present President, Raymond Poincaré, elected Jan. 17, 1913

QUALIFICATIONS, METHOD OF CHOICE, ETC., OF ELECTED EXECUTIVE HEAD IN DIFFERENT STATES
(*Continued*)

STATE	TITLE	QUALIFICATIONS	METHOD OF CHOICE	TENURE OF OFFICE	ELIGIBILITY FOR RE-ELECTION	SALARY	REMARKS
Mexico	President of the United Mexican States	Mexican citizen by birth; enjoyment of political rights; at least 35 years old; not a member of an ecclesiastical order; resident in the country at the time of the election	Indirect, by an electoral college chosen directly by the people	6 years	Not mentioned as the constitution now stands; hence President is deemed eligible to succeed himself	$50,000 a year	The exercise of dictatorial powers by the President is common in Mexico. The country has been in the throes of a revolution since 1910

QUALIFICATIONS, METHOD OF CHOICE, ETC., OF ELECTED EXECUTIVE HEAD IN DIFFERENT STATES
(*Continued*)

STATE	TITLE	QUALIFICATIONS	METHOD OF CHOICE	TENURE OF OFFICE	ELIGIBILITY FOR RE-ELECTION	SALARY	REMARKS
Switzerland	Federal Council. (This is composed of seven members and is presided over by a President of the Confederation, chosen for 1 year by the Federal Assembly from among the members of the council)	Same as for the National Council (namely, citizenship; at least 20 years of age, enjoyment of political rights). Not more than one member of the Federal Council may be chosen from the same canton	Indirect, by the National Council and the Council of States in joint session. The Federal Council is chosen anew after each election of the National Council (whose members are elected for three-year terms)	3 years	Reëligible, but the President of the Confederation may not be reëlected for the next succeeding one-year term	Constitution: Art. 99 provides that the members of the Federal Council shall receive an annual salary from the federal treasury	The President of the Confederation has no powers in excess of those of any other member of the Federal Council

QUALIFICATIONS, METHOD OF CHOICE, ETC., OF ELECTED EXECUTIVE HEAD IN DIFFERENT STATES
(*Continued*)

STATE	TITLE	QUALIFICATIONS	METHOD OF CHOICE	TENURE OF OFFICE	ELIGIBILITY FOR RE-ELECTION	SALARY	REMARKS
United States	President of the United States of America	Natural-born citizen; at least 35 years of age; residence within the United States at least 14 years	Indirect, by an electoral college. (See Constitution in Appendix, Art. 2, and Art. 12)	4 years	Not mentioned in the constitution, hence considered eligible; but restricted by custom to two terms	$75,000 a year	

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Table of Ministers in England, France, and Italy since 1880

England Prime Minister		France Premier		Italy Premier	
Gladstone	Apr. 1880	Jules Ferry	Sept. 1880	Cairoli	July 1879
		Gambetta	Nov. 1881	Depretis	May 1881
		De Freycinet	Jan. 1882		
		Duclerc	Aug. 1882		
		Fallières	Jan. 1883		
		Jules Ferry	Feb. 1883		
Salisbury	July 1885	Brisson	Apr. 1885		
Gladstone	Feb. 1886	De Freycinet	Jan. 1886		
Salisbury	Aug. 1886	Goblet	Dec. 1886		
		Rouvier	May 1887	Crispi	July 1887
		Tirard	Dec. 1887		
		Floquet	Apr. 1888		
		Tirard	Feb. 1889		
		De Freycinet	Mar. 1890		
				Rudini	Feb. 1891
Gladstone Rosebery	Aug. 1892	Loubet	Feb. 1892	Giolitti	May 1892
		Ribot	Dec. 1892		
		Dupuy	Apr. 1893		
		Casimir-Perier	Dec. 1893	Crispi	Dec. 1893
		Dupuy	May 1894		
		Ribot	Jan. 1895		
Salisbury Balfour	June 1895	Bourgeois	Oct. 1895		
		Meline	Apr. 1896	Rudini	July 1896
		Brisson	June 1898	Pelloux	June 1898
		Dupuy	Oct. 1898		
		Waldeck-Rousseau	June 1899		
				Saracco	June 1900
				Zanardelli	Feb. 1901
		Combes	June 1902		
				Giolitti	Nov. 1903
Campbell-Bannerman Asquith	Dec. 1905	Rouvier	Jan. 1905	Fortis	Mar. 1905
		Sarrien	Mar. 1906	Sonnino	Feb. 1906
		Clemenceau	Oct. 1906	Giolitti	May 1906
		Briand	July 1909	Sonnino	Dec. 1909
				Luzzatti	Mar. 1910
		Monis	Mar. 1911	Giolitti	Mar. 1911
		Caillaux	June 1911		
		Poincaré	Jan. 1912		
		Briand	Jan. 1913		
		Barthou	Mar. 1913		
		Doumerque	Dec. 1913		
		Ribot	June 1914	Salandra	Mar. 1914
		Viviani	June 1914		

CHAPTER VI

THE JUDICIARY

The judiciary is that organ of government charged with the interpretation and application of the law. To its part falls the task of deciding disputed points of law, of discerning and protecting the rights and privileges of individuals under the law, of determining infractions of the law and inflicting penalties therefor. The necessity for a department with such functions is due to the nature of government and its relations with individuals, and to the conflicts which inevitably arise between individuals themselves.

Definition and functions.

It is inconceivable that any legislative body, however wise and well organized, can foresee and provide for all the changes in social and economic conditions incident to the natural development of the state: it is the function of the judiciary to apply existing law to individual cases resulting from such changes. In states having a written constitution not subject to amendment by the ordinary processes of legislation, as is the case in the United States, it is possible that the legislative body will pass legislation not in accord with the provisions of this constitution: it is the function of the judiciary to determine whether or not legislation is legal. In all states the executive is vested with powers of interference with the liberties and property of the individual — powers necessary and proper if rightly used for the benefit of the whole people: it is the function of the judiciary to afford to any person who feels aggrieved a just and impartial hearing and to determine whether the executive power was legally exercised. In the modern state separate individuals are continually in dispute with one another as to their relative rights under the law: it is the function of the judiciary to settle such disputes accord-

ing to law. The legally drawn and executed laws of the state are continually being broken by individuals who try thus to prey upon society for their own gain: it is the function of the judiciary to try such individuals and to mete out to them such punishment as is fitting within the limits set by law.

The judiciary may be said to be the great adjusting force in government, on the one hand upholding the established rights of the individual against encroachment by another individual or against any conscious or unconscious usurpation on the part of the powerful legislative and executive branches of government, and on the other hand curbing the uprisings of individuals or bodies of individuals who rebel against the legal acts or enactments of the legislative or executive branches.

The nature and importance of the judicial functions require two qualifications for the personnel of this department. In the first place, the judges must have a thorough knowledge of law. Members of the judiciary are thus necessarily technical specialists. In the second place, judges must be absolutely and unqualifiedly impartial.

Qualifications of judges.

The existence of a personnel having such characteristics depends upon three factors: the method of selection, the tenure of office, and the rate of compensation.

Means of obtaining judges with these qualifications.

Three methods of choice exist: choice by legislative appointment, by executive appointment, and by popular election. Any one of these is open to theoretical objections. (1) The *legislative body* is hardly equipped to estimate fairly the ability and fitness of a man for judge: it is too liable to be swayed by party prejudice. Furthermore, the election of judges by the legislature tends to give the legislature a power over the judiciary which might foster tyranny. (2) The second of the objections just stated applies equally to the selection of judges by the *executive head;* this method, it is asserted, tends to place the control of the judiciary under the executive. (3) The method of selection

Method of appointment.

by *popular election* is to be criticised on the ground that the people at large are not qualified to estimate the highly technical qualities necessary for judges; that they, as the legislature, are too liable to be swayed by party prejudices, and that judges elected by popular vote are under great temptation to temper their decisions to popular sentiment in order to increase their chances of reëlection.

Of the three methods, the least objectionable is *selection by the executive*, and this is the method used in all the great states of the world to-day. A wise chief executive is better able to estimate the qualifications of a judge than are members of the legislative body or the people at large. Furthermore, selection by the executive prevents the undignified intrusion of party politics. Control by the executive is prevented by the conditions of the tenure of office.

Tenure of office of judges.

In most of the great states of the world at the present time judges are appointed to serve during good behavior. In other words, judges are appointed for life, subject to removal for cause. This provision for the tenure of office offsets the single important objection to choice by the executive head; namely, that such a method of choice gives the executive a degree of control over the judiciary. If the power of *appointment* and the power of *dismissal* were both vested in the chief executive, it is evident that he could, if unscrupulous in the use of these powers, have an immense influence over the judiciary; but where, after appointment, a judge is secure in his place for life, such judge may feel free to do his duty without prejudice of any kind, either for or against the chief executive. In some countries, as Italy, the executive has the power to change the station of judges, reassigning them from one station to another on condition that such reassignment be not to a station of lower rank. This power has been exercised at times to remove certain judges hostile to the executive policies to stations where their jurisdiction and decisions would not interfere with such policies. Action of this kind is in the nature of

control by the executive over the judiciary and is partially responsible for the weakness of the judiciary in Italy. As a general rule, it may be stated that the tenure of office should be such as to allow no interference of any kind by another department, except when misbehavior of a judge is charged and proven.

The third factor to insure the high quality of judges is the compensation allowed them. It is manifest, first, that this compensation should be such as to enable a judge to devote his entire time and efforts to the service of the state, and second, that this compensation be in some way guaranteed to him so long as he shall serve the state. In the United States the salaries paid are liberal, and, in the case of justices of the Supreme Court, are guaranteed under the constitution not to be diminished during their term of office. Similar conditions exist in other great states; most of them, however, merely guaranteeing that the salaries shall not be changed, thus leaving no chance for increase. With their material welfare provided for and secure for the future, the judges can do their duty with courage and independence.

Compensation of judges.

In discussing the executive we noticed a division and subdivision into departments and bureaus to correspond with the different character of the duties to be performed; similarly in the organization of the judiciary and of the courts we find divisions.

Organization of judiciary: grades of courts and judges.

The most fundamental feature of division common to the judicial organization of all states is the division of the courts for the trial of cases into separate ranks or gradations, corresponding to the nature and importance of the cases involved. Thus in Germany from lowest to highest the courts range as follows: *Amtsgericht*, *Landgericht*, *Oberlandesgericht*, and *Reichsgericht*, the first named being a court limited to petty cases and the last named being the supreme court of the Empire. In France the courts range upward from the courts of the

justice of the peace (*juge de paix*), through the tribunals of first instance (*tribunaux de première instance*), the courts of appeal (*cours d'appel*), the assize courts (*cours d'assises*), to the court of cassation (*cour de cassation*). In the United States the entire country is divided into nine judicial circuits, and each circuit is subdivided into the number of districts deemed necessary to handle the cases that arise. Corresponding with these districts and circuits we have judges of the district court, judges of the circuit court, judges of the circuit court of appeals, and, over and above all, justices of the Supreme Court of the United States. In all the countries the attempt is made to give a pyramidal arrangement to the system, its base being composed of a large number of courts distributed through the state according to the density of population and having a primary jurisdiction in most cases, and its apex being a single national supreme court to which cases of importance and difficulty may be carried on appeal.

Division according to the nature of the case.

Not only are courts thus divided into separate grades for the dispatch of cases, but within the courts themselves is commonly a division according to the nature of the case under trial. The vast majority of cases come under the application either of what is known as criminal law or what is known as civil law. Consequently, in all states we have, as a most fundamental and noteworthy feature of the judicial system, two classes of courts: (1) the courts having jurisdiction over civil cases, and (2) those having jurisdiction over criminal cases. In some of the lower grades of courts, the courts handle cases of both kinds where petty offenses or small amounts are in question. On the continent of Europe the states generally have an additional system of courts known as administrative courts to handle cases where government officials are involved. In addition to these civil and criminal courts, and administrative courts, each state has special courts to handle cases of a special character, as ecclesiastical courts, commercial courts, courts of claims, etc. Of the divisions indicated above, the most im-

portant are those founded on the distinctions between criminal and civil law, and those termed administrative courts; the jurisdiction and nature of these will be indicated in more detail.

Criminal and civil cases and courts.

All great states distinguish between offenses which injure the state or community and offenses which injure the individual. To correspond with this distinction we have the system of criminal law and the system of civil law.

A crime, against which procedure is in accordance with the principles of criminal law, is an omission of a duty commanded, or the commission of an act forbidden, by public law, which omission or commission affects injuriously public rights or is a breach of the duties due to the whole community. The emphasis is upon the injury done to the public security, peace, and dignity, although such injury may be in the form of a private wrong. Hence, under criminal law would be tried offenses against the order and security of the state, as treason; offenses against the police administration or public authority in general, as breach of the peace; offenses against the life, health, liberty, fame, and constituted rights and privileges of any individual, as murder or libel; and offenses against property, as theft and forgery. Criminal law contains the definition of the offenses, the principles of procedure in trial, and the statement of the penalties and punishments with provisions for their enforcement.

Distinguished from the criminal law is the civil law, that body of law relating to the private rights of individuals in a community, infringement upon which does not necessarily constitute an offense against the public or community. Thus a dispute between two individuals as to the boundary line between their respective properties would, if no further interest were involved, naturally be a suit in civil law.

The two bodies of law do overlap, however; it may be said that a large proportion of omissions and commissions are both "wrongs" for which the injured party may claim compensation

and also offenses for which the offender may be prosecuted in the interest of the community.

The courts of various great states recognize by their organization this fundamental difference in the nature of cases.

Civil and criminal courts.

Although often the lower grades of courts, which are restricted to cases of small importance, have the same organization for the trial of both criminal and civil cases, the higher courts are usually divided. Thus in Germany the *Reichsgericht*, the highest court of the Empire, consists of four criminal and six civil parts for handling respectively the criminal and civil cases which come before it; in France the *cour de cassation*, the highest court of the French system, consists of three sections: the court of petitions (*chambre de requêtes*), the criminal court, and the civil court, the first named being a section which in civil cases submitted on appeal gives or denies the right of appeal to the civil court section; in England the distinct system of courts is more complete than in the countries just mentioned, civil cases of importance being tried in the county courts or in the High Court of Justice, and criminal cases in the courts of the general system, including the courts of the justice of the peace, the courts of quarter sessions, the assize courts, and the court of criminal appeal.

The administrative courts form a notable feature of the organization of the judiciary in the great states of continental Europe. The purpose of these courts is to provide special tribunals for the trial of cases arising from disputes between individuals and administrative officials or from disputes between administrative officials themselves. The advantage claimed for these special courts is that the nature of administrative disputes is many times so peculiar that ordinary judges would not be qualified to determine the issue. When a government officer acting in his official capacity is a party to a dispute, he cannot, according to this theory, be treated like an ordinary individual, for if he be, the work of government is liable to be obstructed.

System of administrative courts in foreign countries.

The objection to this system of administrative courts is that it tends to destroy the safeguard of the citizen against the tyranny of the administrative officials. In these special courts there is a tendency to emphasize the privileges of the administrative officials over the rights of the individual citizen. England and the United States have never introduced such courts. In both countries the officials of government (except the king, and the President during his term of office) are subject to the jurisdiction of the ordinary courts.

Another notable feature of the organization of the judiciary for the performance of its work is that in all states the judges act, according to the nature and gravity of the cases under consideration or according to the courts in which they serve, either singly or in separate bodies relatively small in number. The judicial powers are not centralized under a single head, as are the executive powers, nor are they exercised by all the members of the judiciary in joint session, as are the legislative powers. A single judge may conduct cases in the lower courts, two or three judges together may conduct a court of a higher grade (as the circuit court of appeals in the United States), and a small body of judges may sit together in the highest court (as do the justices in the Supreme Court of the United States). The whole system is unified by the position of the supreme court at the top of the pyramid, but in all ordinary procedure the courts act separately and independently.

Organization of judiciary singly or in small groups.

A feature in the division of labor for the judiciary in England and the United States is the existence of the jury system. The right of trial by jury has come to be practically a most important element in the system in these two states, to such a degree that it has been wittily said that the ultimate aim of the English constitution is to get twelve good men into a box.

Organization of judiciary: the jury system.

A jury is a body of laymen summoned and sworn to inquire into the truth as to questions of fact raised in legal proceedings,

whether criminal or civil. The jury and the judge act together in the case, the jury acting on the one hand as an assistant to the judge and on the other as a check on the judge. The jury assists the judge in the decision on matters of fact, not of law. The jury acts as a check on the power which the judge would have were he intrusted with the right to decide questions both of fact and of law.

The chief advantage of the jury system lies in the effect it has upon the people at large in their attitude toward the courts and law. Where the administration of justice is wholly in the hands of lawyers and judges, an impression is liable to exist that law is a mystery unintelligible to people at large, and that justice only proceeds through the devious paths of legal precedent and formulæ. With the jury system, on the contrary, public attention is drawn to the courts and their methods, and men learn to respect their impartiality and to believe in their decisions.

As the jury system is established at present, a grave disadvantage lies in the necessity for a unanimous decision of the jurors. It is wise, of course, that justice should err on the side of mercy, but a system that allows a single obstinate individual to defeat the honest convictions of eleven men as intelligent as himself tends to delay or even to defeat justice.

Jurisdiction of state courts. Federal and commonwealth courts in the United States.

In states where the judicial system is organized wholly as a unit in the organization of government, as in Germany, France, and England, all the courts are state courts; in the United States, however, two separate and distinct systems of courts exist: the courts of the United States (the various grades of which have been outlined) and the courts of the separate commonwealths of the United States. In this country the courts of the various commonwealths handle the larger proportion both of civil and criminal cases. In general, the federal courts deal with cases in which the interests involved either concern the United States as a whole or are such as could not properly be handled

by the separate commonwealth courts. Thus cases of the following character would fall within the jurisdiction of the federal courts: (1) Cases involving disputes to which the federal government is a party; (2) cases involving an interpretation and application of the federal constitution, of the laws of the United States, or of treaties legally entered into under the constitution and laws; (3) cases involving ambassadors, ministers, or public officials of a like character, and consuls; (4) cases involving admiralty and maritime jurisdiction; (5) cases involving disputes between commonwealths of the United States or between a commonwealth and a foreign state.

In the due exercise of its functions and powers the judiciary in all states is called upon at times to make decisions which practically create new law. In England, for example, the legislative body is, as we have emphasized, the supreme law-making body of the state, but the judicial body is called upon in many cases to interpret and apply the laws enacted by that supreme body. The interpretations and applications made by the judiciary establish precedents and themselves become part of the fundamental law of the state. This function is not one expressly granted by the constitution, but one which is a practical necessity demanded by varying social and economic conditions in all states. As in England, so in other countries, the courts have gradually built up a very considerable amount of what is known as "judge-made" law.

Powers and functions of the judiciary in matters affecting legislation.

In this connection the Supreme Court of the United States has exercised very notable and unusual powers; namely, (1) the power to set aside and declare to be without force any enactment of the federal legislative body which in the opinion of the court is not in accord with the constitution, and (2) the power to interpret authoritatively the language of the constitution. These powers are exercised on the ground that the constitution is the fundamental law of the state and that the

Notable power of the Supreme Court in United States.

judicial power is expressly extended by the terms of the constitution "to all cases, in law and equity, arising under this constitution, the laws of the United States, etc." (U. S. Const., Art. III, Section 2). The right of the Supreme Court to exercise these powers has been acknowledged since early in the history of the country.

Importance and result of this power in United States.

The importance of these powers in the hands of the judiciary upon the character of the government and the position of the judiciary is beyond estimation. In England, Parliament is supreme: the courts may declare certain acts unwarranted under the existing law, but Parliament may remedy this by the passage of a new law in the ordinary processes of legislation. In Germany it is a commonly accepted fact that the promulgation of a law by the Emperor, after that law has passed in due form the legislative body, renders it in force; the safeguards of the constitution are thus in the hands of the Emperor and the legislature. In the United States, however, the rôle of guardian of the constitution has been intrusted to the Supreme Court: the legislature has not the power of passing on the legality of its own acts, as it has in England; nor do the executive head and the legislature have it in their power to put in force acts of doubtful constitutionality, as in Germany. The Supreme Court has been unsparing in its use of these powers, having thus defeated over twenty acts of Congress. The Supreme Court, as a result, occupies a position of dignity and respect that the judiciary occupies in no other country in the world. It is the steadying influence in government, the ultimate authority withstanding any attempts by the legislative body to use its great power in a tyrannical way, the body whose judgments are most respected by public opinion throughout the state.

Judicial procedure: the parties to an action.

Of the procedure in the courts only a few general features can be given. In every case in all countries there must be an accuser or plaintiff, an accused, and a judge. In England and the United States, and to some extent in other countries, the judge may in

cases of some importance be assisted by a jury. The accused is permitted to be represented and defended by a lawyer or advocate, who has thus become in all civilized states to-day an essential element in civil and criminal cases. The accuser or plaintiff may be an individual citizen, also represented by a lawyer or advocate, or may be (and commonly is in the states of continental Europe) an official of a government department charged with this duty.

The grade or degree of court into which a case is first introduced is determined by the nature and importance of the case. In civil cases a common custom is to give original jurisdiction to the lowest grade of courts in cases involving an amount less than a stipulated value, as two hundred dollars; and to give original jurisdiction in cases involving greater value to a higher grade of courts. In criminal cases a similar procedure is followed, petty offenses being dealt with in courts of the lowest grade and crimes of a serious nature in courts of higher grade. Cases of a special nature not coming within the province of the regular system of courts are dealt with in special courts. In some countries, as France and Germany, where doubt exists as to which courts properly have jurisdiction, as, for example, whether the regular civil courts or the administrative courts should receive a case, courts of conflict have been established, the function of which is to refer cases to the proper courts. Commonly, under the system in various countries, certain specified cases fall in the jurisdiction of a certain grade of courts; thus, for example, in Germany, divorce suits are brought in the *Landgerichte* (court of second grade), and in the United States under the constitution the Supreme Court has original jurisdiction "in all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be a party" (U. S. Const., Art. III, Section 2).

The jurisdiction of various courts.

A feature of the judicial system common to all great states is the right of appeal from the decision of a court of a lower grade to that of a court of a higher grade. The right of

appeal may be exercised in both civil and criminal cases and in the special cases in the special courts. The ground on which an appeal is based is usually error in trial. The granting of an appeal is in some cases a perfunctory matter, being insured under the legal system, and in other cases is in the power of the higher court itself; but such grant is not understood in any case to prejudice the upper court in its consideration of the trial by, and decision of, the lower court. The action of the upper court may consist either in reaffirming the decision of the lower court, or reversing the decision of the lower court and giving a decision of its own, or remanding a case back to the lower court for retrial. A case of importance may be carried from the lower courts to the highest court in the state by successive appeals. So commonly is the right of appeal taken and granted that it has been found necessary in many states to have intermediate courts which deal with these cases alone, such as the circuit court of appeals in the United States, the court of criminal appeals in England, and the court of petition (*chambre des requêtes*) in France.

The right of appeal.

In the modern state the infliction of penalties and punishments in the courts is upon a very different basis from that of former times. For criminal offenses the punishments in former times were usually severe, such punishments being inflicted on the theory of revenge or retaliation, or on the theory that cruel punishments served to frighten prospective criminals. Thus in England of the eighteenth century there were approximately two hundred and fifty offenses for which the punishment was death, and as late as 1830 a nine-year-old boy was sentenced to death for breaking a shop window and stealing a trifling amount of paint. The jails and prisons, too, were kept in an inhuman way. In modern times the theory of the aim of punishment has entirely changed. Painstaking investigation of the causes of crime has inspired the belief that on the one hand a considerable proportion of crime can be prevented, and that on the other

Penalties and punishments.

many criminals can be converted into useful members of society. Thus prevention of crime and reformation of the criminal have become the ends of modern justice. In view of these ends, the offenses for which death (capital punishment) is meted out have been reduced in numbers, juvenile courts have been established to deal with the cases of children, reform schools have taken the place of prisons for youthful offenders, prisons have been made light, clean, and airy, criminals have been taught useful trades during their term of imprisonment, and numerous social agencies outside of the judicial department coöperate in finding honest work for the released criminal.

Chap. VI. Statistics and Illustrative Citations

The Supreme Court of the United States and its Power over Legislation

(*a*)

Chief Justice Marshall's famous decision in the Marbury *v.* Madison case, 1803, contains the argument upon which rests the power of the United States Supreme Court to interpret the constitution and to declare legislation by Congress null and void when such legislation is not in accord with the constitution. The pertinent part of the decision is as follows:

The question, whether an act, repugnant to the constitution, can become the law of the land, is a question deeply interesting to the United States; but, happily, not of an intricacy proportioned to its interest. It seems only necessary to recognize certain principles, supposed to have been long and well established, to decide it. That the people have an original right to establish, for their future government, such principles as, in their opinion, shall most conduce to their own happiness, is the basis on which the whole American fabric has been erected. The exercise of this original right is a very great exertion; nor can it, nor ought it, to be frequently repeated. The principles, therefore, so established, are deemed fundamental: and as the authority from which they proceed is supreme, and can seldom act, they are designed to be permanent.

This original and supreme will organizes the government, and assigns to different departments their respective powers. It may either stop here, or establish certain limits not to be transcended by those departments. The government of the United States is of the latter description. The powers of the legislature are defined and limited; and that those limits may not be mistaken or forgotten, the constitution is written. To what purpose are powers limited, and to what purpose is that limitation committed to writing, if these limits may, at any time, be passed by those intended to be restrained? The distinction between a government with limited and unlimited powers is abolished, if those limits do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed, are of equal obligation. It is a proposition too plain to be contested, that the constitution controls any legislative

act repugnant to it; or that the legislature may alter the constitution by an ordinary act.

Between these alternatives, there is no middle ground. The constitution is either a superior paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and, like other acts, is alterable when the legislature shall please to alter it. If the former part of the alternative be true, then a legislative act, contrary to the constitution, is not law: if the latter part be true, then written constitutions are absurd attempts, on the part of the people, to limit a power, in its own nature, illimitable.

Certainly, all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation, and consequently, the theory of every such government must be, that an act of the legislature, repugnant to the constitution, is void. This theory is essentially attached to a written constitution, and is, consequently, to be considered, by this court, as one of the fundamental principles of our society. It is not, therefore, to be lost sight of, in the further consideration of this subject.

If an act of the legislature, repugnant to the constitution, is void, does it, notwithstanding its invalidity, bind the courts, and oblige them to give it effect? Or, in other words, though it be not law, does it constitute a rule as operative as if it was a law? This would be to overthrow, in fact, what was established in theory; and would seem, at first view, an absurdity too gross to be insisted on. It shall, however, receive a more attentive consideration.

It is, emphatically, the province and duty of the judicial department, to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule. If two laws conflict with each other, the courts must decide on the operation of each. So, if a law be in opposition to the constitution; if both the law and the constitution apply to a particular case, so that the court must either decide that case, conformable to the law, disregarding the constitution; or conformable to the constitution, disregarding the law; the court must determine which of these conflicting rules governs the case: this is of the very essence of judicial duty. If, then, the courts are to regard the constitution, and the constitution is superior to any ordinary act of the legislature, the constitution, and not such ordinary act, must govern the case to which they both apply.

Those, then, who controvert the principle, that the constitution is to be considered, in court, as a paramount law, are reduced to the necessity of maintaining that courts must close their eyes on the constitution, and see only the law. This doctrine would subvert the very foundation of all written constitutions. It would declare that an act which, according to the principles and theory of our government, is entirely void, is yet, in practice, completely obligatory. It would declare, that if the legislature shall do what is expressly forbidden, such act, notwithstanding the express prohibition, is in reality effectual. It would be giving to the legislature a practical and real omnipotence, with the same breath which professes to restrict their powers within narrow limits. It is prescribing limits, and declaring that those limits may be passed at pleasure. That it thus reduces to nothing, what we have deemed the greatest improvement on political institutions, a written constitution, would, of itself, be sufficient, in America, where written constitutions have been viewed with so much reverence, for rejecting the constructions. But the peculiar expressions of the constitution of the United States furnish additional arguments in favor of its rejection. The judicial power of the United States is extended to all cases arising under the constitution. Could it be the intention of those who gave this power, to say, that in using it, the constitution should not be looked into? That a case arising under the constitution should be decided, without examining the instrument under which it arises? This is too extravagant to be maintained. In some cases, then, the constitution must be looked into by the judges. And if they can open it at all, what part of it are they forbidden to read or to obey?

There are many other parts of the constitution which serve to illustrate this subject. It is declared, that "no tax or duty shall be laid on articles exported from any state." Suppose, a duty on the export of cotton, of tobacco or of flour; and a suit instituted to recover it. Ought judgment to be rendered in such a case? Ought the judges to close their eyes on the constitution, and only see the law?

The constitution declares "that no bill of attainder or *ex post facto* law shall be passed." If, however, such a bill should be passed, and a person should be prosecuted under it; must the court condemn to death those victims whom the constitution endeavors to preserve?

"No person," says the constitution, "shall be convicted of

treason, unless on the testimony of two witnesses to the same *overt* act, or on confession in open court." Here, the language of the constitution is addressed especially to the courts. It prescribes, directly for them, a rule of evidence not to be departed from. If the legislature should change that rule, and declare one witness, or a confession out of court, sufficient for conviction, must the constitutional principle yield to the legislative act?

From these, and many other selections which might be made, it is apparent, that the framers of the constitution contemplated that instrument as a rule for the government of courts, as well as of the legislature. Why otherwise does it direct the judges to take an oath to support it? This oath certainly applies in an especial manner, to their conduct in their official character. How immoral to impose it on them, if they were to be used as the instruments, and the knowing instruments, for violating what they swear to support!

The oath of office, too, imposed by the legislature, is completely demonstrative of the legislative opinion on this subject. It is in these words: "I do solemnly swear, that I will administer justice, without respect to persons, and do equal right to the poor and to the rich; and that I will faithfully and impartially discharge all the duties incumbent on me as . . ., according to the best of my abilities and understanding, agreeably to the constitution and laws of the United States." Why does a judge swear to discharge his duties agreeably to the constitution of the United States, if that constitution forms no rule for his government? if it is closed upon him, and cannot be inspected by him? If such be the real state of things, this is worse than solemn mockery. To prescribe, or to take this oath, becomes equally a crime.

It is also not entirely unworthy of observation, that in declaring what shall be the supreme law of the land, the constitution itself is first mentioned; and not the laws of the United States, generally, but those only which shall be made in pursuance of the constitution, have that rank.

Thus, the particular phraseology of the constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that a law repugnant to the constitution is void; and that courts, as well as other departments, are bound by that instrument.

(Cranch 1, p. 137 ff.)

(*b*)

The United States Supreme Court has used this power to annul congressional legislation in but 33 cases, as follows:

Number of Opinions				Number of Dissenting Justices
1	1 Cranch 137.	Marbury *v.* Madison . . .	1803	
9	19 How. 393.	Scott *v.* Sanford	1856	2
1	2 Wall. 561; 117 U. S. 697.	Gordon *v.* U. S.	1864	
2	4 Wall. 333.	*Ex parte* Garland	1866	4
1	6 Wall. 160.	Reichart *v.* Felps	1867	
1	7 Wall. 571.	The Alicia	1868	
2	8 Wall. 603.	Hepburn *v.* Griswold . . .	1869	3
1	9 Wall. 41.	United States *v.* DeWitt . .	1869	
1	9 Wall. 274.	The Justices *v.* Murray . .	1869	
2	11 Wall. 113.	The Collector *v.* Day . . .	1870	1
2	13 Wall. 128.	United States *v.* Klein . .	1871	2
3	17 Wall. 322.	United States *v.* Railroad Co.	1873	3
3	92 U. S. 214.	United States *v.* Reese . .	1875	2
1	95 U. S. 670.	United States *v.* Fox . . .	1877	
1	100 U. S. 82.	Trade Mark Cases . . .	1879	
1	106 U. S. 629.	United States *v.* Harris . .	1882	
2	109 U. S. 3.	Civil Rights Cases . . .	1883	1
2	116 U. S. 616.	Boyd *v.* United States . .	1885	
1	127 U. S. 540.	Callan *v.* Wilson	1887	
1	142 U. S. 547.	Counselman *v.* Hitchcock .	1891	1
1	148 U. S. 312.	Navigation Co. *v.* U. S. . .	1894	
3	157 U. S. 429.	Pollock *v.* Farmers Loan Co.	1894	2
5	158 U. S. 601.	Pollock *v.* Farmers Loan Co.	1894	4
2	163 U. S. 228.	Wong Wing *v.* United States	1895	
1	174 U. S. 47.	Kirby *v.* United States . .	1899	2
2	181 U. S. 283.	Fairbank *v.* United States .	1901	3
1	190 U. S. 127.	James *v.* Bowman	1903	2
3	197 U. S. 516.	Rassmussen *v.* United States	1905	
5	207 U. S. 463.	Employers Liability Cases .	1907	4
3	208 U. S. 161.	Adair *v.* United States . .	1907	2
2	213 U. S. 138.	Keller *v.* United States . .	1908	3
1	213 U. S. 297.	United States *v.* Evans . .	1908	
1	219 U. S. 346.	Muskrat *v.* United States .	1910	

Note. — During this period 218 federal statutes in all have been contested on constitutional grounds, of which the Supreme Court has upheld 185.

(From "The Supreme Court and Unconstitutional Legislation," B. F. Moore, Appendix 1.)

(c)

To illustrate the process of judicial interpretation of the constitution by the United States court, the following table of cases interpreting different parts of a single sentence is presented. This table includes only a small proportion of the total number of cases bearing on the text in question.

The original words of the constitution are as follows: "The Congress shall have power . . .

"To regulate commerce with foreign nations, and among the several States, and with the Indian tribes;"

The particular part which is subject to interpretation in the following list of cases is: "The Congress shall have power to regulate commerce among the several States."

Interstate and Foreign Commerce.	
9 Wh., Gibbons *v.* Ogden,	means intercourse between the states and with foreign countries.
Subjects of Commerce.	
7 How. 283, Passenger Cases,	passengers are:
10 How. 410, Ducat *v.* Chicago,	passengers are:
135 U. S. 100, Leisy *v.* Hardin,	all commodities ordinarily exchanged are:
8 Wall. 168, Paul *v.* Va.,	policies of insurance are not:
Things become Subjects of Commerce when	
116 U. S. 517, Coe *v.* Errol,	the journey to another State has actually commenced.
And remain Subjects of Commerce	
95 U. S. 485, Hall *v.* DeCuir,	during the journey;
12 Wh. 419, Brown *v.* Md.,	until sale by the importer;
13 Wall. 29, Low *v.* Austin,	or breaking of the original package in which they were imported.
The Federal Power over the Subjects of Commerce gives Congress the right to	
12 Pet. 72, U. S. *v.* Coombs,	punish any interference, or willful injury to goods *in transitu.*

9 How. 560, U. S. *v.* Marigold,	prohibit the importation of a subject of commerce.
112 U. S. 580, Hard-money Cases,	tax immigrants.

The Federal Power over the Means of Commercial Intercourse, derived from the Power over Commerce, gives Congress the right to

18 How. 421, Pa. *v.* Wheeling Brdg.; 10 Wall. 454, The Clinton Brdg.; 109 U. S. 385, Miller *v.* Mayer; 105 U. S. 470, Bridge Co. *v.* U. S.,	establish or authorize a bridge which obstructs the navigation of a river; or abate such a structure.
6 Wall. 646, White's Bank *v.* Smith; 7 Pet. 324, Peyroux *v.* Howard,	regulate liens on vessels.
10 Wall. 557, The Daniel Ball,	regulate a boat carrying interstate freight between two points in the same state.
102 U. S. 541, Lord *v.* Steamship Co.,	regulate the liability of the owners of a boat plying the high seas between two points in the same state.
96 U. S. 1, Pensacola Tel. Co. *v.* W. U. Tel. Co.,	establish a telegraph company.
127 U. S. 1, Cal. *v.* Cal. Pac. R. R.,	establish a railroad.
196 U. S. 369, Wis. *v.* Duluth,	improve harbors, rivers, etc.
135 U. S. 641, Cherokee Nation *v.* Southern Kansas Railroad Co.	grant to a corporation engaged in interstate commerce the right of eminent domain through a state.

(From "The Federal Power over Commerce and its Effect on State Action," W. D. Lewis, p. 125 ff.)

(*d*)

A single example from one of these decisions will suffice to illustrate the method of interpretation.

Extract from decision, 1824, written by Chief Justice Marshall in the case of Gibbons *v.* Ogden. This opinion "is the basis of all subsequent decisions construing the commerce clause, and is the recognized source of authority."

The words are: "Congress shall have power to regulate commerce with foreign nations, and among the several states

and with the Indian tribes." The subject to be regulated is commerce: and our constitution being, as was aptly said at the bar, one of enumeration, and not of definition, to ascertain the extent of the power it becomes necessary to settle the meaning of the word. The counsel for the appellee would limit it to traffic, to buying and selling or the interchange of commodities, and do not admit that it comprehends navigation. This would restrict a general term, applicable to many objects, to one of its significations. Commerce undoubtedly is traffic, but it is something more; it is intercourse. It describes the commercial intercourse between nations, and parts of nations, in all its branches, and is regulated by prescribing rules for carrying on that intercourse. The mind can scarcely conceive a system for regulating commerce between nations, which shall exclude all laws concerning navigation, which shall be silent on the admission of the vessels of the one nation into the ports of the other, and be confined to prescribing rules for the conduct of individuals, in the actual employment of buying and selling, or of barter.

If commerce does not include navigation, the government of the Union has no direct power over that subject, and can make no law prescribing what shall constitute American vessels, or requiring that they shall be navigated by American seamen. Yet this power has been exercised from the commencement of the government, has been exercised with the consent of all, and has been understood by all to be a commercial regulation. All America understands, and has uniformly understood, the word "commerce" to comprehend navigation. It was so understood, and must have been so understood, when the constitution was framed. The power over commerce, including navigation, was one of the primary objects for which the people of America adopted their government and must have been contemplated in forming it. The convention must have used the word in that sense; because all have understood it in that sense, and the attempt to restrict it comes too late. . . .

The universally acknowledged power of the government to impose embargoes, must also be considered as showing that all America is united in that construction which comprehends navigation in the word " commerce." Gentlemen have said, in argument, that this is a branch of the war-making power, and that an embargo is an instrument of war, not a regulation of trade. That it may be, and often is, used as an instrument of

war, cannot be denied. An embargo may be imposed for the purpose of facilitating the equipment or manning of a fleet, or for the purpose of concealing the progress of an expedition preparing to sail from a particular port. In these, and in similar cases, it is a military instrument, and partakes of the nature of war. But all embargoes are not of this description. They are sometimes resorted to without a view to war, and with a single view to commerce. In such a case, an embargo is no more a war measure than a merchantman is a ship of war, because both are vessels which navigate the ocean with sails and seamen. When Congress imposed that embargo which, for a time, engaged the attention of every man in the United States, the avowed object of the law was the protection of commerce, and the avoiding of war. By its friends and its enemies it was treated as a commercial, not as a war measure. . . . The word used in the constitution, then, comprehends, and has been always understood to comprehend, navigation within its meaning; and a power to regulate navigation is as expressly granted as if that term had been added to the word "commerce."

To what commerce does this power extend? The constitution informs us, to commerce "with foreign nations, and among the several states, and with the Indian tribes." It has, we believe, been universally admitted that these words comprehend every species of commercial intercourse between the United States and foreign nations. No sort of trade can be carried on between this country and any other, to which this power does not extend. It has been truly said, that commerce, as the word is used in the constitution, is a unit, every part of which is indicated by the term. If this be the admitted meaning of the word, in its application to foreign nations, it must carry the same meaning throughout the sentence, and remain a unit, unless there be some plain, intelligible cause which alters it.

The subject to which the power is next applied, is to commerce "among the several states." The word "among" means intermingled with. A thing which is among others is intermingled with them. Commerce among the states cannot stop at the external boundary line of each state, but may be introduced into the interior.

It is not intended to say that these words comprehend that commerce which is completely internal, which is carried on between man and man in a state, or between different parts

of the same state, and which does not extend to or affect other states. Such a power would be inconvenient and is certainly unnecessary.

Comprehensive as the word "among" is, it may very properly be restricted to that commerce which concerns more states than one. The phrase is not one which would probably have been selected to indicate the completely interior traffic of a state, because it is not an apt phrase for that purpose; and the enumeration of the particular classes of commerce to which the power was to be extended, would not have been made had the intention been to extend the power to every description. . . . The genius and character of the whole government seem to be, that its action is to be applied to all the external concerns of the nation, and to those internal concerns which affect the states generally; but not to those which are completely within a particular state, which do not affect other states, and with which it is not necessary to interfere, for the purpose of executing some of the general powers of the government. The completely internal commerce of a state, then, may be considered as reserved for the state itself.

But, in regulating commerce with foreign nations, the power of Congress does not stop at the jurisdictional lines of the several states. It would be a very useless power if it could not pass those lines. The commerce of the United States with foreign nations is that of the whole United States. Every district has a right to participate in it. The deep streams which penetrate our country in every direction, pass through the interior of almost every state in the Union, and furnish the means of exercising this right. If Congress has the power to regulate it, that power must be exercised wherever the subject exists. If it exists within the states, if a foreign voyage may commence or terminate at a port within a state, then the power of Congress may be exercised within a state.

This principle is, if possible, still more clear, when applied to commerce "among the several states." They either join each other, in which case they are separated by a mathematical line, or they are remote from each other, in which case other states lie between them. What is commerce "among" them; and how is it to be conducted? Can a trading expedition between two adjoining states commence and terminate outside of each? And if the trading intercourse be between two states remote from each other, must it not commence in one, terminate in the other, and probably pass through a third?

Commerce among the states must, of necessity, be commerce with the states. In the regulation of trade with the Indian tribes, the action of the law, especially when the constitution was made, was chiefly within a state. The power of Congress then, whatever it may be, must be exercised within the territorial jurisdiction of the several states. The sense of the nation, on this subject, is unequivocally manifested by the provisions made in the laws for transporting goods, by land, between Baltimore and Providence, between New York and Philadelphia, and between Philadelphia and Baltimore.

We are now arrived at the inquiry, What is this power? It is the power to regulate; that is, to prescribe the rule by which commerce is to be governed. This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the constitution. These are expressed in plain terms, and do not affect the questions which arise in this case, or which have been discussed at the bar. If, as has always been understood, the sovereignty of Congress, though limited to specified objects, is plenary as to those objects, the power over commerce with foreign nations, and among the several States, is vested in Congress as absolutely as it would be in a single government, having in its constitution the same restrictions on the exercise of the power as are found in the constitution of the United States. The wisdom and the discretion of Congress, their identity with the people, and the influence which their constituents possess at elections, are, in this, as in many other instances, as that, for example, of declaring war, the sole restraints on which they have relied, to secure them from its abuse. They are the restraints on which the people must often rely solely, in all representative governments.

CHAPTER VII

THE ELECTORATE

In preceding chapters we have had occasion a number of times to speak of "*popular* government," "*popular* election," "election by the *people*," etc.; indeed, in the classification of governments we made the distinction between democratic and autocratic governments on the basis of participation or non-participation in the government by the *people*. In England and the United States especially the right of the people to exercise the suffrage (*i.e.* to vote) for the personnel of government, and thereby to hold an important degree of control over the government, is the very foundation of the liberalism and free institutions which have existed in those countries longer than in most. On the continent the French Revolution established the right of the people to a share in the government, and now such a right is universally recognized in the states of western Europe. The fundamental principle of democracy is involved in the suffrage of the people.

Importance of the people in modern government.

Strictly speaking, however, the phrases "*popular* government" and "election by the *people*" are misleading, for the reason that in no state do *all* the people possess the suffrage. The principle on which certain specified persons or classes of persons are excluded from the suffrage in democratic countries is in general one of reason and common sense. For example, it is absurd to suppose that an infant in arms is capable of casting an intelligent vote; it is equally absurd to suppose that an imbecile should be allowed to vote, or that a convicted criminal should have a share in government by the use of the ballot.

Not all people are allowed to vote.

The restrictions upon the suffrage are intended to prevent the exercise of this right by all persons who could not do so with judgment and propriety.

The body of persons in a state who *are* legally qualified to exercise the suffrage is known as the *electorate.* In those states where the suffrage is most widely extended to-day the ratio of the electorate to the entire population is not greater than one to five; in former times in states which considered themselves democratic, as in England, various restrictions made this ratio between the electorate and the whole people very much less, in some cases not more than a few hundred thousand possessing the suffrage in a total population of several millions. We live to-day in an era of liberalism in which the tendency is to extend the suffrage as widely as reason will allow.

The electorate: proportion relative to whole people.

I. Qualifications of the Electorate

The qualifications required for the exercise of the suffrage are differently determined in the different states. In a few of the great states, as France and Germany, a single comprehensive law or article of the constitution embraces the whole state. In England a series of laws, including the great reform acts of 1832, 1867, and 1884, has extended the suffrage without wholly repealing previous statutes, thus rendering the condition theoretically complex. In actual fact, however, the suffrage is to-day very liberally extended in England. In the United States, under the constitution, the electorate must have "the qualifications requisite for electors of the most numerous branch of the State legislature" (U. S. Const., Art. I, Section 2), and provision is made in the famous fifteenth amendment that "the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." In this country, therefore,

Qualifications of electorate: by what method legally declared.

the electorate of the United States is determined by the qualifications set by the separate commonwealths each for itself, with the curious result that certain classes of persons living in one commonwealth are privileged to vote and the same classes living in a different commonwealth are not privileged to vote. In our discussion of the electorate as constituted in the United States we shall have to refer at times to the conditions in the separate commonwealths.

Among the limitations upon the electorate the most obvious is that of age. In general, states require the attainment of the twenty-first year before bestowing the right to vote. It is obvious, of course, that this limit is an arbitrary one set for the average person; many persons are mentally qualified to vote at eighteen, many others of slow development may not really be qualified at thirty. Common sense demands that there shall be some limit applicable to all alike, and the age of twenty-one has commonly been accepted as just.

Qualifications of electorate: age limitation.

A second limitation upon the suffrage is to be found in the requirement that a person, to possess that right, must be a citizen of the state in which he proposes to vote. This is obviously a reasonable requirement. It is fundamentally an instinct of self-preservation that permits only those who acknowledge allegiance to the state to have a share in its government. Persons who are aliens could not be expected to vote with a thought only to the welfare of a state in which they happen to reside but to which they acknowledge no allegiance.

Qualifications of electorate: citizenship.

In modern times, however, on account of the rapid and inexpensive means of transportation, vast numbers of people are continually migrating from one state to another for the purpose of benefiting themselves materially, so that the great states of the world have uniformly introduced methods of bestowing citizenship upon newcomers and thus admitting them to the suffrage. No individual, therefore, with a real intention to remain in a state and a desire to participate in its government,

need continue to be alien, provided he is otherwise qualified for the electorate.

This problem of the bestowal of citizenship has been especially pressing in the relatively new countries, as the United States, Canada, Australia, and the South American states, for it is to these countries that the great overflow from the old states has gone. In some cases it has been recognized that the bestowal of citizenship upon all races and peoples indiscriminately would be bad policy, would be indeed suicidal. Thus in the United States it is recognized that persons of the Mongolian race cannot mix with, and be assimilated by, the dominant Caucasian race in the country; therefore the law provides that no alien Mongolian can be admitted to citizenship. Realizing further the economic dangers in an influx of a horde of Chinese coolies whose standards of wages and living are far below those of the native citizens of this country, the United States has even gone so far as to prevent such persons from entering the country at all.

In this same connection the action of many of the southern commonwealths of the United States in making such requirements for the electorate as will include the whites and exclude the negroes, yet not contravene the fifteenth amendment, is notable. The negro problem is one peculiar to our country, and in our country is restricted to one section, the South. In many districts of the South the negroes outnumber the whites, so that a free and unrestricted suffrage would throw the control of the local government entirely into the hands of negroes. Such an event being repugnant and impossible to the whites, various special property, educational, and ancestry requirements exist, enforcement of which has resulted in the virtual disfranchisement of the negro in the South. Such procedure is justified by the unique conditions in that section and the necessity of the dominant white minority to take measures for its self-preservation. As a general principle, measures by which a minority seeks to perpetuate its control over the government cannot, of course, be too strongly condemned.

Closely coupled with the requirement of citizenship for the enjoyment of the suffrage is some form of identification requirement. Commonly this consists in qualification by actual residence in a district or subdistrict for a specified time before voting, and by the registration of the person's name in the list of voters of that district. This requirement is also obviously reasonable. So long as exclusions from the electorate are necessary, some simple method must be devised to insure that no persons legally excluded shall vote. The requirements of residence and registration are the simplest method possible. The length of residence varies much in different states. In some of the commonwealths of the United States it is only one month, in one commonwealth it is two years, the long period being defended by the argument that only by such residence can the citizen become sufficiently familiar with local conditions to exercise the suffrage with good judgment.

Identification.

So far as mental and moral requirements are concerned a citizen is qualified in most states who can read and write, is not a lunatic, has never been convicted of any one of certain classes of high crimes, and is not in jail or prison at the time of an election. The mere recitation of the above conditions shows how far the modern democratic movement has proceeded.

Mental and moral requirements.

One of the most important restrictions laid upon the electorate, and one much under discussion at the present day, is the sex restriction. In most great states the exercise of the suffrage is restricted to men. The reasons for this restriction are historical and traditional. In primitive society political power was coincident with military power, and was wholly in the hands of men. Early in authentic history we find women in a subordinate and dependent position relative to men, having no legal, economic, or civil rights. In an era when nations lived by warfare, the women, who were not subject to military service, sank into insignificance as a political element in society. With the approach of the modern

Sex restrictions.

age, however, as ushered in by the French Revolution, the legal, economic, and civil disabilities which had been imposed upon women were gradually removed, so that women now may in most states enter into contracts, carry on business, engage in a profession, and in general compete on an equality under the law with men in various economic pursuits. Women have taken advantage of their new freedom with eagerness and intelligence. The women workers in modern states are an asset of ever increasing importance to the prosperity of the country. With their economic and legal equality has come the demand for political equality, for admission to the electorate.

The arguments for woman suffrage are strong and have been forcibly presented by a number of able thinkers in modern times. The growth of modern democracy is responsible for the development of the idea of "one citizen, one vote." Thus women have been led to claim the ballot because they are citizens equally with men. Again, the property of women is taxed without regard to sex; whereupon the cry of "taxation without representation" is raised. The injustice of man-made government deciding the laws for women is strongly emphasized; the women assert that their rights would be better protected had they a right to participate in the government. The use of sex as one of the restrictions upon the electorate puts the women in the same class with idiots and criminals, the women argue, an unnatural grouping which is abhorrent to enlightened humanity. The women point to prominent members of their sex who in the position of rulers have performed distinguished political services, as a proof that women have political capacity.

On the other hand, the opponents of woman suffrage have their best arguments in the fundamental difference between the sexes. They assert that to woman is given the function of bearing and rearing children, of creating and maintaining the home. They argue that the suffrage would tend to destroy the purely feminine quality of the average woman, would

distract her interest and attention from the great function intrusted to her by nature, and would introduce discord into the home.

In considering this question it must be understood that universal suffrage prefaces a great revolution in political conditions in a state. Universal suffrage would in nearly all countries more than double the number of voters. The part that would be added to the present electorate would undoubtedly have much the same elements of bad and good, of ignorant and educated, as the present electorate has. The chances of ill-advised clamor would be as great as at present, with the added misfortune of seeming more unanimous. The election of unsuitable officials would not cease were women to vote: their faculties for discerning the politically good and bad are no finer than those of men. The production of hasty and injurious legislation would not wholly cease, for the political acumen of women is no greater than, and, at present at least, not so well trained as, that of men. The advantage to the state, therefore, is dubious: an enormous addition to the electorate is provided, with no corresponding benefit assured.

The theoretical arguments for the right of women to vote have such weight that equal suffrage has been granted in various communities. New Zealand and Finland are two countries in which women hold the suffrage. The experiment in those countries is not on a sufficiently large scale and has not been tried long enough to draw decisive conclusions on its operation. In England the agitation for woman suffrage is disturbing the entire country. Certain women who believe the suffrage is only to be gained by force (the "militants") have undertaken a campaign of terrorism which has tended in many quarters to alienate popular sympathy from the cause. A number of the commonwealths of the United States now grant the suffrage to women, but here also the test has been so short that decided opinions are not justified. All that can be said at present is that the cause seems to be gaining steadily in democratic states throughout the world.

A restriction upon the electorate which exists in some states and is justified by certain reasonable arguments is that the right to vote shall be a privilege only of those who possess property of, or more than, a stipulated value. The fundamental argument advanced to support this restriction is that only the man of property has a real interest in the state. If the state prosper, his property and his rights to it are protected; if the state do not prosper, his property and his rights to it are endangered. The possession of property, too, is thought to imply something more than average ability in its possessor: thus such a restriction will on the whole operate to keep the suffrage in the hands of the intellectually worthy. It is only the man of property, according to this argument, who is entitled to participate in the government. He will have a better judgment than the average man and will be inspired by self-interest to advocate wise measures and to cast his vote for the best men. The man without property has nothing at stake, nothing to lose; presumably he has less judgment and less interest in the welfare of the state.

Property restrictions.

Most democratic states at the present day have discarded this restriction. In the first place, such a restriction places the government in the hands of the moneyed classes. There exists always under such circumstances a suspicion that legislation is class legislation, legislation not for the good of the whole state but rather for the material advantage of the propertied classes. Furthermore it is justly argued that a large class of persons may by education be unusually well qualified to exercise the suffrage but may never be able to meet the property qualification. Again, it is emphatically denied that the propertyless have no interest or stake in the welfare of the state. The propertyless class is composed mainly of artisans, laborers, farmers on a small scale, and the like. The stake of the propertyless class is their very lives. In a prosperous state there is work in abundance and the laboring man is in demand at good wages: in a misgoverned and unprosperous state the mills and factories shut down, money is hoarded, and the laborer suffers. It is to the

laborer's highest interest that the state be well governed and prosperous. From the other side, too, the laborer has an interest in the state, for it is by his labor and production that under favorable conditions the prosperity of the state is maintained and increased.

The most conspicuous example of this property qualification for the suffrage is to be found in Prussia (considered as distinct from the German Empire). There the electors are divided into three classes according to the amount of taxes they pay, each class having equal representation in the electoral college which chooses the members of the lower legislative house. The result of this arrangement is that a comparatively few large taxpayers in a district have as much power as the great mass of the people. Intense ill-feeling has been produced among the people by this system, and the demand for reform is yearly growing more insistent.

Breadth of electorate under these restrictions.

The above are the chief restrictions placed upon the electorate in modern democratic states. It will be seen that in general all male citizens of mature age and average intelligence and morality are given the vote. The consideration of no other phase of modern political conditions will so astonishingly reveal the difference between the present era and the past.

II. Function of the Electorate

Function of the electorate.

The function of the electorate is to vote. Strangely enough, this function, which was so desired by men of past ages, is now not exercised by a very large proportion of those qualified. One of the problems of the modern state is to contrive means to induce the whole electorate to cast its vote. In an election of unusual interest, at times as much as seventy-five per cent of the qualified electors vote; in local elections which are considered of little importance, the percentage runs far below this.

A curious experiment has been suggested, and tried on a small

scale, in this connection. Belgium and Spain have introduced a system of compulsory suffrage, by which each qualified voter, if without reasonable excuse, is required to cast his ballot. Failure to comply with this requirement is punishable by fine, increase of taxes, or loss of political rights. It cannot be said that compulsory suffrage has appealed widely to political thinkers. The right to vote, to participate in one's government, is a privilege rather than a duty, and the voluntary exercise of this right is certain to be more conscientious on the part of the individual and more valuable to the state than its compulsory exercise. The voter who casts his vote under fear of punishment is of little value to the state: what is most desirable is the intelligent voter who after careful deliberation casts an intelligent ballot for men or measures which seem to him wise.

Compulsory voting.

Reason suggests to all men that the function of voting is sure to be more judiciously exercised by some persons than by others: a few states have attempted on this ground to make a distinction in the weight of the votes cast by persons of different classes. By assigning a weight of two or even three to the vote of an educated person or a person with large property interests, — that is, in practice allowing such persons two or three votes to the single vote of the ordinary man, — it is believed this better-qualified class of the electorate can balance the unwieldy mass of the uneducated and unwise.

Weighted voting.

The system has been put in practice in Belgium under the following conditions: one vote is allowed to each citizen duly qualified; one additional vote is allowed to each citizen owning land to the value of two thousand francs or more, and to each citizen thirty-five years old, with legitimate offspring, and paying a direct tax of five francs or more; two additional votes are allowed to citizens who have completed certain courses of education, and to citizens whose position or profession is or has been such as to warrant the belief that they have a good education. The maximum number of votes allowed any one individual is three.

In spite of the theoretical justness of this system, in practice it has met with strong opposition. Introduced into Belgium in 1893, it seems likely to be discarded within the next few years owing to the clamor of the mass of persons who have only a single vote. The chief objection offered is similar to one urged against the property qualification for the suffrage; namely, that this system in effect establishes a rule of the moneyed minority without respect to the wishes of the moneyless majority. Reasonable objection cannot be offered against the increased weight given to educational qualifications, but the possession of property is not always the result of superior intelligence, and, it is argued, should not be considered as a special qualification for the suffrage. Belgium may soon give up its system and fall in line with the other states in giving to each qualified citizen a single vote.

III. Appointive Powers of the Electorate

Powers of the electorate: appointive.

The powers of the electorate are mainly appointive in the democratic states of the world. The degree of democracy which a state has reached is measured largely by the number and importance of the offices which the electorate controls. In the *legislative* department, the electorate controls the appointment of members of the lower chambers in all modern democratic states. In many states, as in France and the United States, the electorate controls also the appointment of members of the upper chamber. In the *executive* department, the electorate in democratic states commonly controls the appointment of the chief executive, except in certain states where the office is hereditary, as England, Italy, Germany, etc. In many cases this control is exercised by an intermediate body, as in France and the United States, but the essential fact remains true that the ultimate control is in the hands of the electorate. In England the electorate controls the ministry, though it does not actually appoint the personnel of the ministry. In the *judicial* department,

experience has, as has been explained, tended to take the control of appointments away from the electorate.

Because of the importance of the legislative department, the control which the electorate exercises over it is the most vital element in a democracy. However important a personage the chief executive may be, his functions are to a large extent determined by the legislative body. He is unable to obtain funds for the exercise of his authority without legislative sanction, he cannot promulgate laws for the state until these laws have been passed by the legislative body, he cannot carry on war without the aid of the legislative body. In short, the legislature is the heart of the whole structure of the government. It behooves us, therefore, to understand thoroughly the powers of the electorate as they are exercised in the control of appointments to the legislative body.

Importance of electorate's appointment of legislature.

The general method of appointment can be very briefly and explicitly stated. The territory of a state is divided into a number of districts, and the electorate in each district appoints a representative to the national legislative body. The boundaries of the districts may be determined on a basis of population, as is commonly the case in districts whose electorate appoints members of the lower house, or on a basis of administrative convenience (as in the case of the French *départements*), or historical unity (as in the case of the various commonwealths in the United States). Where the electorate controls directly or indirectly the appointment of members of the upper house, such members are commonly appointed from much larger districts than are the members of the lower house. Thus in the United States the number of members of the lower house is proportionate to population, but the number of members of the upper house is dependent upon the number of commonwealths in the Union. In France the members of the lower house (Chamber of Deputies) represent small districts (*arrondissements*), the members of the upper (Senate) represent departments (*départe-*

General method of appointment (election).

ments). In Germany the members of the lower house (Reichstag) are appointed in single electoral districts, which were originally (1869) apportioned one per one hundred thousand inhabitants, but which now are very unequal in population.

The appointee or representative elected is commonly he who obtains the greatest number of votes from the electorate. Rarely is a clear majority of all votes cast required; a plurality is commonly sufficient to elect under the laws in various democratic states.

Method of appointment or election.

Strong arguments have been advanced to prove the injustice of the above method of election. These arguments are all based on the fact that election by plurality of votes deprives a large proportion of the electors of any representation at all. Thus in a hypothetical district containing 10,000 electors, 5001 electors can, under this system, elect a representative and leave 4999 entirely unrepresented. On a larger scale, it is conceivable that an actual minority party of the electorate may control the government by carrying a majority of the districts by a small margin and losing the remainder by a large number of votes. Thus, supposing there were 500 districts in all, one party might conceivably carry 260 with a total vote of 1,000,000 votes to 750,000, and lose 240 districts by a total vote of 250,000 to 1,500,000. The party which carried 260 districts would then control the government with a national poll of 1,250,000 votes, and the other party would be in the minority, although throughout the nation it had polled 2,250,000 votes.

Objections to method.

Although the injustice of this method of the distribution of the powers of the electorate in electing representatives is acknowledged by political thinkers, none of the various schemes which have been devised to correct it has met with general approval. These schemes may be divided into two general classes; the first class being composed of those schemes which aim to give each party or group of the electorate representation in proportion to its voting strength, the second class being

Proposed substitutes for present method: proportional and minority representation.

composed of those schemes which aim to give some representation to minorities although not necessarily a representation proportionate to voting strength. The first of these classes is commonly known as proportional representation, the second as minority representation.

It may be said in advance of discussion that any scheme for proportional or minority representation requires the election of more than one representative from each district. Since the number of members in the legislative bodies is now as large as can well carry on business, such a change in the general system would probably best be accomplished by lessening the present number of districts and extending the limits of each district. It must be acknowledged, however, that this change would destroy one of the great advantages of the small-district system, in that the individual voters in the large district would in many cases be ignorant of the character of the candidates nominated, whereas in the small district such ignorance is unlikely.

Under proportional or minority representation schemes, districts must not be single.

One of the schemes advanced to insure proportional representation is commonly known as the *list* or the *free list* system. By this system each political group in the electorate may nominate as many candidates as there are representatives to be elected. Each voter may cast as many votes as there are candidates to be elected, but is required to distribute his votes among the various candidates. Each vote cast is counted both for the individual candidate and for the political group by which he was nominated. Representation is then given to each political group in proportion to the number of votes given to its candidates. The individuals within the parties who are declared elected are determined by the total personal vote each has received.

Proportional representation: the list system.

To illustrate the operation of this system in its simplest form, assume a district with an electorate of 10,000 and six representatives to choose. Three political groups, the Red, the

Blue, and the Green, each nominate six candidates. Each voter casts six votes, distributing them among the various candidates, thus making a grand total of 60,000 votes cast in the district. When the count is made, it is found that the six candidates of the Blue party have collectively polled 30,000 votes, those of the Red party 20,000, those of the Green party 10,000. It is obvious with such results that Blue would elect three representatives, Red two, and Green one. The election returns might appear as follows:

Blue		Red		Green	
Mr. A	6,000	Mr. H	3,800	Mr. T	2,400
Mr. B	5,850	Mr. K	3,700	Mr. V	2,200
Mr. C	5,000	Mr. M	3,650	Mr. W	1,400
Mr. D	4,600	Mr. N	3,400	Mr. X	1,350
Mr. E	4,350	Mr. Q	2,800	Mr. Y	1,350
Mr. F	4,200	Mr. R	2,650	Mr. Z	1,300
	30,000		20,000		10,000
Elected		Elected		Elected	
Mr. A		Mr. H		Mr. T	
Mr. B		Mr. K			
Mr. C					

The above system was used in Cuba in 1908 to elect representatives to the national legislative body and is now used for various elections in Norway, Sweden, and most of the cantons of Switzerland. Its many advantages have led to a consideration of its adoption in France, England, and Holland. Forms of this system, although differing in details from it, as described above, have been introduced in Belgium and Japan, and are being discussed in various of the commonwealths of the United States. It seems the simplest and most just of the many schemes that have been proposed.

Use of the list system.

Another system proposed to insure proportional representation is known as the *Hare* system, having been suggested by an Englishman named Hare. According to this system each voter

has but one vote, but he is allowed to indicate his first, second, and third choice on a single ballot. The number of votes necessary to elect a candidate is found by dividing the number of representatives to be elected into the total number of votes cast, thus obtaining an electoral quotient. As soon as any candidate receives as first choice of the electorate a number of votes equal to the electoral quotient, he is declared elected and no more votes are counted for him. The surplus ballots on which such elected candidate is first choice are counted for the second choice on those ballots. After the second choice is elected, the third choice is counted.

Proportional representation: the Hare system.

To make this clearer, assume again the district with 10,000 electorate and six representatives to be elected. Under the Hare system 10,000 ballots will be voted, each ballot containing three names in order of preference. The electoral quotient will be $\frac{10{,}000}{6} = 1666+$. As soon as any candidate receives 1667 votes as first choice, he is declared elected, and any other ballots on which he is first choice are counted for the candidate on those ballots indicated as second choice. In case after the distribution of the surplus votes of elected candidates it is found that only five men have received over 1667 votes and thus been elected, the candidate who has received the smallest number of votes is eliminated and the ballots on which he was first choice are transferred to the second choice until some candidate receives the requisite number.

This system has the advantage of practically insuring to each voter that one of his three choices will be elected, but its disadvantages outweigh this consideration. It is very complex in operation, and the results depend much upon chance. The order in which the ballots are taken and counted will materially change the result, inasmuch as the second choices upon the ballots counted for one man and the second choices upon the surplus ballots for that same man may materially differ. All ballots have to be brought

Objections to Hare system.

to one central place for counting, and after they have been once counted, a recount is impossible.

The system has been adopted in only one country of prominence; namely, Denmark. It is used in Tasmania, Finland, Moravia, and Ireland for certain elections. It is doubtful whether it would be successful in elections on a large scale and over a great area.

Use of Hare system.

For insuring representation to minorities, although not necessarily in proportion to their voting strength, one scheme, known as the *limited vote* plan, has been adopted in some states. By this scheme each voter is allowed a number of votes, such number, however, being less than the number of representatives to be elected.

Minority representation: limited vote plan.

Thus in the hypothetical district with an electorate of 10,000, and six representatives, each voter under this system would have four votes to be distributed among the various candidates. By careful organization the minority can nearly always be certain of electing two of the six representatives by casting the minority vote solidly for a certain two of the candidates, the majority vote being split up among four candidates of the majority party.

The defects of this system lie in the necessity for complete party control, with the evils which may attend, and in the fact that it allows representation only to a large, well-organized minority. Where three political groups are trying to elect, it is probable that under this system one minority group will be left entirely without representation.

This system of the limited vote has been put in practice in a number of states with some success. Italy, Spain, and Portugal are among the most prominent states which have adopted it. In the United States the system has been used in certain elections in Massachusetts and Pennsylvania.[1]

Use of limited vote.

[1] Pennsylvania Constitution, Art. V, Section XVI.

Whenever two judges of the supreme court are to be chosen for the same term of service, each voter shall vote for one only, and when three are to be chosen, he shall vote for no more than two; candidates highest in vote shall be declared elected.

A second system intended to insure representation to a minority group of the electorate is known as the *cumulative vote* plan. By this plan each voter is given a number of votes equal to the number of representatives to be elected, and is allowed to distribute his votes in any way he wills, giving one to a candidate, all to one candidate, or otherwise.

Minority representation: cumulative vote.

This system, like the one mentioned just previously, requires for its successful operation careful party organization to provide against a great waste of votes. A popular candidate might otherwise receive the cumulative votes of his party far in excess of the number required to elect and other candidates of the same party fail to be elected in consequence. The political party machine must plan beforehand the most effective use of its votes.

The most conspicuous trial of the cumulative vote plan has been made in the commonwealth of Illinois.[1] As a rule the scheme has in operation given the minority party at least one representative in a district. Occasionally, where the party organization of the majority has failed to plan the vote correctly, the minority has elected more representatives than the majority.

Use of cumulative vote.

Theoretically, some form of proportional or minority representation, preferably the former, seems the only just system for a true democracy; practically, however, the simplicity of the present system has led to its retention in most of the great states up to the present day. Some defense may be offered for the present system. The minority in one district will nearly always be the majority party

Defense of present system.

[1] Illinois Constitution, Art. IV, Sections 7 and 8.

The house of representatives shall consist of three times the number of the members of the senate, and the term of office shall be two years. Three representatives shall be elected in each senatorial district at the general election in the year of our Lord one thousand eight hundred and seventy-two, and every two years thereafter. In all elections of representatives aforesaid, each qualified voter may cast as many votes for one candidate as there are representatives to be elected, or may distribute the same, or equal parts thereof, among the candidates, as he shall see fit; and the candidates highest in votes shall be declared elected. (House Documents, Vol. 2.)

in another district, so that a minority in one district may be represented by the successful candidates from another district. For example, the democrats in the commonwealth of Kansas may feel that they are represented by the elected democratic representatives in the neighboring commonwealth of Missouri. It is argued, furthermore, that a system insuring representation to all minority political groups in the electorate will tend to disrupt the government, in that the legislative body will be composed not of representatives of one great majority party and one somewhat smaller minority party, but of representatives of a very large number of small and local political groups, unable to coalesce in opinion and policy, rendering the necessary coalition ministries short-lived and timid, and, in short, making parliamentary government impracticable. The experiments in minority and proportional representation have not yet been conducted long enough or on a sufficiently large scale to prove or disprove these arguments.

The recall.

In connection with the appointive power of the electorate there has been suggested in very modern times a removal power. It is argued that the electorate in an ideal democracy should have the power to recall its elected official if at any time such official is in the opinion of the electorate not properly performing his functions. Ordinarily an official is elected for a certain number of years and during that period has a certainty of tenure of his office; the institution of the *recall* operates to make his tenure of office indeterminate, subject to immediate close at the will of the electorate.

The recall has not been used in the case of national representatives or officials of a state as yet; the device existed in a few of the small cantons of Switzerland and has found especial favor in certain commonwealths and municipalities of the United States, particularly in the western portion. Its operation is simple: on petition of a certain proportion of the electorate, usually about twenty-five per cent, a new election is held, usually with the official in question as one of the candidates, at which it is determined whether the official shall continue in

office or another be elected. Details of operation differ somewhat in the different localities.

The advantage of the recall as a club to hold over dishonest or inefficient officials is obvious. It is another and very radical step in the direction of complete control of the government by the electorate. Grave disadvantages also exist. The possibility is always present that an honest and efficient official may, in the exercise of his duties, arouse the hostility of a considerable proportion of the electorate and be subjected to recall. The effect of a threat of recall may be very bad upon an official disposed to be efficient, paralyzing his will and inclining him so to conduct his office as to meet with popular approval. The cost of the elections required by the recall may amount to considerable. In one instance, in Los Angeles, the cost was nine thousand dollars. In cities as large as New York and Chicago the cost would probably render the scheme inadvisable. One of the worst features of the recall is its operation in the cases of elected members of the judiciary in the various commonwealths of the United States. As has already been shown in the discussion of the judiciary, technical skill and security in the tenure of office are two prerequisites of a fair and impartial judiciary. The recall undermines these by destroying the security in the tenure of office and subjecting the question of technical skill to the judgment of the ill-informed mass of the electorate. In general, it may be said that the institution of the recall tends to lower the influence and subtract from the honor and dignity of public office. It is probable that its advantage could be equally well obtained by a proper use of impeachment provisions.

IV. Legislative Powers of the Electorate

Power of electorate: legislative.

With modern progress in democratic government the electorate has gained not only the power of appointing the officials but in some states a considerable degree of legislative power as well. Originally, of course, certain representatives of the people were elected to exercise the legislative function in the government. So distrustful has

the electorate grown of its own chosen representatives, however, that provisions have been passed by which the electorate can itself *initiate* legislation, or can require that a legislative measure passed by its representatives be *referred* to it directly for its approval or disapproval. The provisions by which these ends are accomplished are popularly known respectively as the *initiative* and the *referendum*.

Initiative.

The initiative provides that a designated proportion of the electorate may frame a legislative measure, present it to the legislature, and, if it be not passed, require that such measure be submitted for approval or disapproval to the whole electorate. Usually the proportion of the electorate necessary to initiate legislation is fixed at about five per cent.

Referendum.

The referendum provides that under certain conditions a measure passed by the legislative body shall be submitted for final approval or disapproval to the whole electorate. The referendum provision may be compulsory for all measures, as in certain cantons of Switzerland, may be compulsory only for constitutional changes, as in other cantons of Switzerland and in most of the commonwealths of the United States, or may be dependent upon the demand of a designated proportion (usually between five and ten per cent) of the electorate.

Use of initiative and referendum.

The initiative and referendum provisions for measures for the whole state is found in Switzerland, the initiative applying to proposed constitutional amendments alone, the referendum being compulsory for amendments to the constitution and optional or on demand for ordinary laws and statutes. The referendum, without the initiative, is provided by the constitution of the Australian Commonwealth. Both initiative and referendum are used in New Zealand for certain special questions, as of taxes or liquor license. A bill has been introduced in England to provide for the referendum to decide serious constitutional issues, and agitation exists at present in France and Norway to provide both initiative and referendum, especially for local issues. In the United States neither the initiative nor the referendum is provided for by the

constitution for the whole state. Forms of the initiative and referendum have been known and used in purely local issues, however, for many years. In very recent times initiative and referendum provisions have been incorporated into the constitution of various commonwealths, as Oklahoma, Oregon, South Dakota, Utah, and Missouri, as a part of the regular legislative machinery.

Results of direct legislation in Switzerland.

Direct legislation (that is, the initiative and referendum) has been tried more fully and more successfully in Switzerland than in any other state. The results of the trial have on the whole been successful, giving Switzerland a more ideally democratic government than any other state has. The legislature in Switzerland has become more an advisory body than a legislative body; the attention of the Swiss electorate is concentrated on measures rather than on men, thus so minimizing the necessity for party politics that parties have feeble organization and no very definite program; and in general, it is argued that direct legislation has prevented bribery and corruption. Even with these manifest advantages, however, a decided disadvantage is to be noted in the indifference of the electorate. Rarely has more than 55 per cent of the electorate voted, and where compulsory voting exists, a notable proportion of the electorate cast blank ballots. This indifference undoubtedly arises from the large number of elections necessary, sometimes fifteen or twenty in a year.

Different conditions in the United States which would affect operation of initiative and referendum.

In considering transplanting the initiative and referendum from Switzerland to the United States, allowance must be made for differences in conditions. The Swiss electorate is relatively small in numbers and high in intelligence and honesty. Few laws are offered and few passed, and the laws in general are brief and simply phrased, the executive being left to execute them by such measures as are deemed necessary. No executive or judicial veto upon the acts of the legislative body exists. In the United States the electorate is huge in number and scattered over a vast territory. With size

and extent, the clumsiness and expense in the operation of direct legislation are enormously increased. In the United States we have made citizenship and the vote easy to acquire, with the result that a large proportion of the electorate is unintelligent and unused to our social and political conditions, and a certain proportion is open to purchase. In the United States, an enormous number of laws are considered and passed each year. The late Senator D. B. Hill computed that 14,000 laws were passed by the national and commonwealth governments during a single year. During a ten-year period the legislature of the commonwealth of New York averaged 550 laws a year. Also, the laws are commonly intended to be exhaustive, covering all possible contingencies of application and execution. Direct legislation in the United States would thus throw a great burden upon the electorate, necessitating a large number of elections with the presentation of many complex measures at each election. The electorate in the United States is accustomed to depute men to do its legislative work for the state, is really better qualified to vote upon men than upon measures. Direct legislation is contrary to our habits. It is doubtful whether direct legislation would, as some argue, destroy political parties. It is possible that the party out of power would use the initiative and referendum to harass the majority and delay constructive action. In the United States we already have checks upon the legislative body in the shape of the executive veto and the judicial power to declare measures unconstitutional. Direct legislation would tend to destroy the value of these checks and thus change the whole character of the government. The responsibility of the legislative body would disappear. The legislature might become little more than a committee to draft legislation for the people, the executive would be powerless to veto, and the Supreme Court, after legislation had been passed by the people, would hesitate to declare it unconstitutional. The introduction of direct legislation in the national government of the United States under the present conditions is of doubtful expediency.

If the initiative and referendum could be considered and used, not as a means of legislation but as a check upon legislation, as a possible cure for bribery and corruption, as a club to be held in reserve over inefficient or stubborn legislatives, these provisions might be of great value. If, furthermore, the electorate can be elevated to a high degree of intelligence and honesty, so that votes may be given with judgment and we may be sure that the provisions will not be corruptly used for party purposes, direct legislation may be a blessing. Until such ideal conditions be established, however, the disadvantages of introducing the initiative and referendum in states with broad territory and large electorate of mixed character seem to outweigh the possible advantages.

Possible advantages of direct legislation under good conditions.

Chap. VII. Statistics and Illustrative Citations

1

Extract from the Constitution of Belgium to show the Provisions for Weighted and Compulsory Voting

Section 1. The House of Representatives

Art. 47. The members of the House of Representatives shall be chosen by direct election under the following regulations:

One vote is allotted to citizens who have reached the age of twenty-five years, resident for at least one year in the same commune and who are not otherwise excluded by law.

One additional vote is allotted in consideration of any one of the following conditions:

1) Having reached the age of thirty-five years, being married or a widower with legitimate offspring, and paying to the state a tax of not less than five francs as a householder, unless exempt on account of his profession.

2) Having reached the age of twenty-five years and being the owner either of real estate of the value of at least 2000 francs, said value to be rated on the basis of the cadastral assessment, or possessing income from land corresponding to such valuation, or being inscribed in the great book of the public debt, or possessing obligations of the Belgian government savings-bank bearing at least 100 francs interest.

These inscriptions and bank-books must have belonged to the holder for at least two years.

The property of the wife is counted with that of the husband; that of minor children with that of the father.

Two additional votes are allotted to citizens who have reached the age of twenty-five years, and who fulfill the following conditions:

A) Holding a diploma from an institution of higher instruction, or an indorsed certificate showing the completion of a course of secondary education of the higher degree, without distinction between public or private institutions.

B) Filling or having filled a public office, holding or having held a position, practicing or having practiced a private profession which presupposes that the holder possesses at least the knowledge imparted in secondary instruction of the higher degree. These offices, positions, and professions, likewise the time during which they must have been held or practiced, shall be determined by law.

No one shall have more than three votes.[1]

ART. 48. The constitution of the electoral colleges shall be regulated by law for each province.

Voting is obligatory; it shall take place in the commune, when not otherwise determined by law.[1]

2

STATISTICS SHOWING THE INJUSTICE OF ELECTION BY MAJORITIES

(*a*)

UNITED STATES. FIFTY-SECOND CONGRESS — ELECTION, 1888

PARTIES	VOTE	ELECTED	PER CENT OF VOTE	PER CENT OF REPRESENTATION
Republican . .	4,217,266	88	42.9	26.5
Democrat . . .	4,974,450	235	50.6	71.1
Populist . . .	354,217	9	3.7	2.4
Prohibition . .	207,814		2.1	
Independent . .	76,788		.7	
	9,830,535	332	100	100

[1] As amended Sept. 7, 1893. Elections of representatives are regulated by laws of April 12, and June 28, 1894, as modified by laws of June 11, 1896, March 31, 1898, December 29, 1899, and April 18, 1902. Proportional representation was introduced by the law of December 29, 1899. (From Dodd's "Modern Constitutions.")

(*b*)

OHIO. REPRESENTATION OF THE STATE IN CONGRESS FROM 1877–1897

Congress	Years	Congressional Vote		Representatives			
				Actual		Proportional	
		Rep.	*Dem.*	*Rep.*	*Dem.*	*Rep.*	*Dem.*
45th . .	1877–79	314,529	310,434	12	8	10	10
46th . .	1879–81	277,875	264,737	9	11	10	10
47th . .	1881–83	405,042	340,572	15	5	11	9
48th . .	1883–85	306,674	268,785	8	13	11	10
49th . .	1885–87	395,596	380,934	10	11	11	10
50th . .	1887–89	336,063	325,629	15	6	11	10
51st . .	1889–91	412,520	395,639	16	5	11	10
52d . .	1891–93	362,624	350,528	7	14	11	10[1]
53d . .	1893–95	397,320	407,120	9	12	10	10
54th . .	1895–97	407,371	274,670	19	2	12	8[2]

(Commons, "Proportional Representation.")

(*c*)

AUSTRALIA. ELECTION OF SENATORS, 1910

Victoria

Successful		Unsuccessful	
Findley (Lab.) . . .	217,573	Best (Fusionist) . .	213,976
Barker (Lab.)	216,199	Trenwith (Fusionist)	211,058
Blakey (Lab.) . . .	215,117	M'Cay (Fusionist) . .	195,477
		Goldstein (Independent)	53,583
		Ronald (Independent)	18,380
	648,889		692,474

(Humphrey, "Proportional Representation.")

[1] One Prohibitionist.

[2] One Populist.

(*d*)

VOTES FOR CONGRESSMEN IN 1912, UNITED STATES

STATE	REPRESENTED						UNREPRESENTED						
	Democratic		Republican		Progressive		Democratic	Republican	Progressive	Socialist	Prohibition	Scattering	
	Vote	Members	Vote	Members	Vote	Members							
Alabama	93,483	10						8,372	8,522	458			1 Dem. at large
Arizona	11,389	1						3,110	5,819	3,034	193		
Arkansas	89,718	7						26,417					
California	72,041	3	121,655	4	120,725	4	124,569	33,579	31,604	104,122	14,347		
Colorado	117,775	4						65,877	58,097	12,635			
Connecticut	76,148	5						70,048	29,737				
Delaware	22,485	1						16,740	5,497		2,825		
Florida	36,092	4						2,475	1,624	3,878	255		1 Dem. at large
Georgia	116,192	12											
Idaho			53,342	2			30,178		12,066				2 Rep. at large
Illinois	338,724	20	86,780	4	37,362	3	89,787	275,981	167,218	81,940	14,896		
Indiana	291,288	13						166,698	127,041	38,457	17,349		
Iowa	59,139	3	151,138	8			112,811	31,962	43,228	4,058			
Kansas	108,712	5	43,951	2	17,955	1	55,237	97,153		26,588	900	505	
Kentucky	198,925	9	30,731	2			11,760	62,085	85,543	11,010			
Louisiana	62,776	8								2,841			
Maine	18,077	1	52,914				46,861	16,796	6,558	1,406	900		
Maryland	107,614	6						62,382	2,303	4,436	3,339		
Massachusetts	105,764	8	108,292	8			96,004	55,331	108,574	11,970			
Michigan	39,334	2	127,405	9	31,315	2	124,781	64,409	130,015	14,812	2,351	266	1 Rep. at large
Minnesota	14,718	1	165,900	9			61,283	13,093	8,574		13,987	32,207[1]	1 Rep. at large
Mississippi	43,958	8								302			
Missouri	295,226	14	45,223	2			42,476	178,112	98,115	9,533			
Montana	25,891	2						23,505	16,644	10,271			2 Dem. at large

[1] Public ownership party vote.

VOTES FOR CONGRESSMEN IN 1912, UNITED STATES (*continued*)

STATE	REPRESENTED						UNREPRESENTED						
	DEMOCRATIC		REPUBLICAN		PROGRESSIVE								
	Vote	Members	Vote	Members	Vote	Members	DEMOCRATIC	REPUBLICAN	PROGRESSIVE	SOCIALIST	PROHIBITION	SCATTERING	
Nebraska	59,720	3	65,877	3			54,331	53,045		10,085	7,182		
Nevada			7,379	1			7,311			2,072			
New Hampshire	40,682	2						35,324	4,307	1,580	381		
New Jersey	149,686	11	14,472	1			13,170	85,348	58,296	85	259		
New Mexico	22,139	1						17,900	5,883	2,644			
New York	455,009	31	202,805	11	13,987	1	179,462	280,412	293,985	63,119	21,751	7,763	
North Carolina	149,569	10						2,697	73,440			181	
North Dakota			63,375	3			24,341			8,486			
Ohio	409,771	19	51,075	3			48,689	245,176	118,311	90,986	3,724		1 Dem. at large
Oklahoma	80,745	6	43,389	2			42,125	44,292		39,727			3 Dem. at large
Oregon			42,046	2	16,783	1	35,285		8,679	13,283	7,554	6,280	
Pennsylvania	207,740	12	266,673	18	39,088	6	190,217	203,090	97,621	82,876	18,223	5,125	3 Pro. 1 Rep. at large
Rhode Island	23,785	2	11,718	1			9,841	19,998	8,844		702		
South Carolina	46,298	7						190					
South Dakota			63,486	3			44,577			3,862	2,799		
Tennessee	111,928	8	29,417	2			42,286	36,391	4,203	2,104			
Texas	195,307	18						2,564	86	503	96		
Utah			43,133	2			37,192		22,358	8,971		742	2 Dem. at large
Vermont			28,865	2			23,649			1,220	1,329		
Virginia	85,196	9	14,868	1			13,857	8,988	6,895	3,870		1,147	
Washington			95,798	3			74,911		88,442	39,124			2 Pro. at large
West Virginia	48,163	2	81,366	4			73,434	47,798					1 Rep. at large
Wisconsin	54,250	3	146,883	8			72,092	61,257		23,937			
Wyoming			19,130	1			14,720		4,828	2,230	296		

3

Examples of Provisions for Initiative and Referendum

(*a*)

SWITZERLAND

Art. 89. Federal laws, decrees, and resolutions shall be passed only by the agreement of the two councils.

Federal laws shall be submitted for acceptance or rejection by the people, if the demand is made by 30,000 voters or by eight cantons. The same principle applies to federal resolutions which have a general application, and which are not of an urgent nature.

Chapter III. Amendment of the Federal Constitution [1]

Art. 118. The federal constitution may at any time be amended, in whole or in part.

Art. 119. Total revision shall take place in the manner provided for passing federal laws.

Art. 120. When either council of the Federal Assembly resolves in favor of a total revision of the constitution and the other council does not consent thereto, or when fifty thousand Swiss voters demand a total revision, the question whether the federal constitution ought to be revised shall be in either case submitted to a vote of the Swiss people, voting yes or no.

If in either case the majority of those voting pronounce in the affirmative, there shall be a new election of both councils for the purpose of undertaking the revision.

Art. 121. Partial revision may take place either by popular initiative or in the manner provided for the passage of federal laws.

The popular initiative shall consist of a petition of fifty thousand Swiss voters for the adoption of a new article or for the abrogation or amendment of specified articles of the constitution.

When several different subjects are proposed by popular initiative for revision or for adoption into the federal constitution, each one of them must be demanded by a separate initiative petition.

[1] Chapter iii was revised on July 5, 1891, Arts. 118–123 being substituted for the original Arts. 118–221; the important change is in Art. 121, which extends popular initiative to partial revision of the constitution.

The initiative petition may be presented in general terms or as a completed proposal of amendment.

If the initiative petition is presented in general terms and the federal legislative bodies are in agreement with it, they shall draw up a project of partial revision in accordance with the sense of the petitioners, and shall submit it to the people and the cantons for acceptance or rejection. If, on the contrary, the Federal Assembly is not in agreement with the petition, the question of partial revision shall be submitted to a vote of the people, and if a majority of those voting pronounce in the affirmative, the Federal Assembly shall proceed with the revision in conformity with the popular decision.

If the petition is presented in the form of a completed project of amendment and the Federal Assembly is in agreement therewith, the project shall be submitted to the people and the cantons for acceptance or rejection. If the Federal Assembly is not in agreement with the project, it may prepare a project of its own, or recommend the rejection of the proposed amendment, and it may submit its own counter-project or its recommendation for rejection at the same time that the initiative petition is submitted to the vote of the people and cantons.

ART. 122. The details of procedure in cases of popular initiative and popular votes on amendments to the constitution shall be determined by federal law.

ART. 123. The amended federal constitution or the revised portion of it shall be in force when it has been adopted by a majority of Swiss citizens voting thereon and by a majority of the cantons.

In making up the majority of cantons the vote of a half-canton shall be counted as half a vote.

The result of the popular vote in each canton shall be considered as the vote of the canton.

(*b*)

UNITED STATES

Commonwealth of Oregon

(June 4, 1906)

Article IV of the Constitution of the State of Oregon shall be, and hereby is, amended by inserting the following section

in said article IV after section 1, and before section 2, and it shall be designated in the Constitution as section 1*a* of article IV:

"SECTION 1*a*. The referendum may be demanded by the people against one or more items, sections, or parts of any act of the legislative assembly in the same manner in which such power may be exercised against a complete act. The filing of a referendum petition against one or more items, sections, or parts of an act shall not delay the remainder of that act from becoming operative. The initiative and referendum powers reserved to the people by this Constitution are hereby further reserved to the legal voters of every municipality and district, as to all local, special, and municipal legislation, of every character, in or for their respective municipalities and districts. The manner of exercising said powers shall be prescribed by general laws, except that cities and towns may provide for the manner of exercising the initiative and referendum powers as to their municipal legislation. Not more than ten per cent of the legal voters may be required to order the referendum nor more than fifteen per cent to propose any measure, by the initiative, in any city or town."

Sections 1 and 2 of article XVII of the Constitution of the State of Oregon shall be, and hereby are, amended to read as follows:

"SEC. 1. Any amendment or amendments to this Constitution may be proposed in either branch of the legislative assembly, and if the same shall be agreed to by a majority of all the members elected to each of the two houses, such proposed amendment or amendments shall, with the yeas and nays thereon, be entered in their journals and referred by the Secretary of State to the people for their approval or rejection, at the next regular general election, except when the legislative assembly shall order a special election for that purpose. If a majority of the electors voting on any such amendment shall vote in favor thereof, it shall thereby become a part of this Constitution. The votes for and against such amendment or amendments, severally, whether proposed by the legislative assembly or by initiative petition, shall be canvassed by the Secretary of State in the presence of the Governor, and if it shall appear to the Governor that the majority of the votes cast at said election on said amendment or amendments, severally, are cast in favor thereof, it shall be his duty forthwith after such canvass, by his proclamation, to declare the said

amendment or amendments, severally, having received said majority of votes to have been adopted by the people of Oregon as part of the Constitution thereof, and the same shall be in effect as a part of the Constitution from the date of such proclamation. When two or more amendments shall be submitted in the manner aforesaid to the voters of this State, at the same election, they shall be so submitted that each amendment shall be voted on separately. No convention shall be called to amend or propose amendments to this Constitution, or to propose a new Constitution, unless the law providing for such convention shall first be approved by the people on a referendum vote at a regular general election. This article shall not be construed to impair the right of the people to amend this Constitution by vote upon an initiative petition therefor."

NOTE. — Nine states have in one form or another adopted the initiative and referendum: Delaware, Idaho, Maine, Missouri, Montana, Oklahoma, Oregon, South Dakota, and Utah. The most complete test of the provisions has been made in Oregon.

(*c*)

STATISTICS ON THE USE OF THE INITIATIVE AND REFERENDUM

The following is a list of the measures submitted to the people of Oregon at the election of 1910, with the results and percentage of total vote polled for each measure.

	YES	NO	MAJORITY APPROVING	MAJORITY REJECTING	PERCENTAGE OF TOTAL VOTE FOR CANDIDATES
1910. — Total vote, 120,248:					
Woman suffrage amendment [1]	35,270	59,065	——	23,795	78
Act establishing branch insane asylum in eastern Oregon [2]	50,135	41,504	8,630	——	76
Act calling convention to revise State Constitution [2]	23,143	59,974	——	36,831	69
Amendment providing separate election districts for members of the General Assembly [2]	24,000	54,252	——	30,252	65

	Yes	No	Majority Approving	Majority Rejecting	Percentage of Total Vote for Candidates
Amendment repealing requirement that all taxes shall be "equal and uniform"[2]	37,619	40,172	——	2,553	64
Amendment authorizing establishment of railroad districts and purchase and construction of railroads[2]	32,844	46,070	——	13,226	65
Amendment authorizing uniform taxation "except on property not specifically taxed," etc.[2]	31,629	41,692	——	10,063	61
Act increasing judge's salary in eighth judicial district[1]	13,161	71,503	——	58,342	70
Bill to create Nesmith County[1]	22,866	60,591	——	37,725	69
Bill to maintain state normal school at Monmouth[1]	50,191	40,044	10,147	——	75
Bill to create Otis County[1]	17,426	62,016	——	44,590	66
Bill changing boundaries of Clackamas and Multnomah Counties[1]	16,250	69,002	——	52,752	71
Bill to create Williams County[1]	14,508	64,090	——	49,582	65
Amendment abolishing poll tax[1]	44,171	42,127	2,044	——	72
Amendment giving cities and towns special rights under the local option law[1]	53,321	50,779	2,542	——	86
Bill to fix liability of employers[1]	56,258	33,943	22,315	——	75
Bill to create Orchard County[1]	15,664	62,712	——	47,048	65
Bill to create Clark County[1]	15,613	61,704	——	46,091	64
Bill to maintain normal school at Weston[1]	40,898	46,201	——	5,303	72
Bill to change boundaries of Washington and Multnomah Counties[1]	14,047	68,221	——	54,174	68
Bill to maintain normal school at Ashland[1]	38,473	48,655	——	10,182	72

	Yes	No	Majority Approving	Majority Rejecting	Percentage of Total Vote for Candidates
Amendment prohibiting the liquor traffic in Oregon [1]	43,540	61,221	——	17,681	87
Bill to make prohibition amendment effective [1]	42,651	63,564	——	20,913	87
Bill creating a board to draft an employers' liability law [1]	32,224	51,719	——	19,495	69
Bill to prohibit seine, trap, or wheel fishing in Rogue River [1]	49,712	33,397	16,315	——	69
Bill to create Deschutes County [1]	17,592	60,486	——	42,894	65
Bill for general law under which new counties may be created, or county boundaries changed [1]	37,129	42,327	——	5,198	66
Amendment permitting counties to incur indebtedness beyond $5000 to build roads [1]	51,275	32,906	18,369	——	70
Bill extending the direct primary law to allow voters to express their choice for President and Vice President, presidential electors, and delegates to national conventions [1]	43,353	41,624	1,729	——	71
Bill to create the "Board of People's Inspectors of Government" [1]	29,955	52,538	——	22,583	68
Amendment extending initiative, referendum, and recall, making terms of members of legislature six years, etc. [1]	37,031	44,366	——	7,335	67
Amendment providing for verdict of three fourths of jury in civil cases [1] . . .	44,538	39,399	5,139	——	69

(Given in Oberholtzer, "The Referendum, Initiative, and Recall in America.")

[1] Initiated by the people.

[2] Acts or constitutional amendments submitted in answer to petition of the people, *i.e.* referendum.

[3] Acts or constitutional amendments submitted by the legislature upon its own motion.

(*d*)

INITIATIVE AND REFERENDUM IN LOCAL MATTERS

Various commonwealths have adopted the initiative and referendum in local matters by general legislation. The percentages required for the operation of the provisions are as follows:

	Initiative Per Cent	Referendum Per Cent
South Dakota	5	5
Nebraska	20	20
Oregon	15	10
Montana	8	5
Oklahoma		
In counties and districts	16	10
In cities	25	25
Maine	Facultative	
Arkansas	Facultative	
Colorado	15	10
Wisconsin		
General election	15	20
Special election	25	20
Ohio	30	15
California (counties)		
General election	10	20
Special election	20	20
California (cities)		
Regular election	15	25
Special election	30	25

(From Oberholtzer, "The Referendum, Initiative, and Recall in America.")

(*e*)

In various other states, cities have charters providing for the initiative and referendum. For example,

	Initiative at Regular Election	Initiative at Special Election	Referendum
Grand Rapids, Mich.	12%		12%
Wilmington, N. C.	10%	35%	35%
Greensboro, N. C.	10%	25%	25%
Dallas, Texas	5%	15%	15%
Fort Worth, Texas	15%		15%
Amarillo, Texas	5%	15%	15%
Austin, Texas	25%		25%
Beaumont, Texas	8%	20%	20%
Marshall, Texas	25%		25%
Miami, Florida	10%	15%	10%
Reno, Nevada	15%	30%	
Haverhill, Mass.	10%	25%	25%
Gloucester, Mass.	10%	25%	25%

4

The Recall

(*a*)

TYPICAL PROVISIONS FOR THE OPERATION OF THE RECALL

Extract from the Iowa Law authorizing certain cities to establish government by commission, showing the recall provision.

"The holder of any elective office may be removed at any time by the electors qualified to vote for a successor of such incumbent. The procedure to effect the removal of an incumbent of an elective office shall be as follows: A petition signed by electors entitled to vote for a successor to the incumbent sought to be removed, equal in number to at least twenty-five per centum of the entire vote for all candidates for the office of mayor cast at the last preceding general municipal election, demanding an election of a successor of the person sought to be removed, shall be filed with the city clerk, which petition shall contain a general statement of the grounds for which the removal is sought. The signatures to the petition need not all be appended to one paper, but each signer shall add to his signature his place of residence, giving the street and number. One of the signers of each such paper shall make oath before an officer competent to administer oaths that the statements

therein made are true as he believes, and that each signature to the paper appended is the genuine signature of the person whose name it purports to be. Within ten days from the date of filing such petition the city clerk shall examine and from the voters' register ascertain whether or not said petition is signed by the requisite number of qualified electors, and, if necessary, the council shall allow him extra help for that purpose; and he shall attach to said petition his certificate, showing the result of said examination. If by the clerk's certificate the petition is shown to be insufficient, it may be amended within ten days from the date of said certificate. The clerk shall, within ten days after such amendment, make like examination of the amended petition, and if his certificate shall show the same to be insufficient, it shall be returned to the person filing the same; without prejudice, however, to the filing of a new petition to the same effect. If the petition shall be deemed to be sufficient, the clerk shall submit the same to the council without delay. If the petition shall be found to be sufficient, the council shall order and fix a date for holding the said election, not less than thirty days or more than forty days from the date of the clerk's certificate to the council that a sufficient petition is filed. The council shall make or cause to be made publication of notice and all arrangements for holding such election, and the same shall be conducted, returned, and the result thereof declared, in all respects as are other city elections. The successor of any officer so removed shall hold office during the unexpired term of his predecessor. Any person sought to be removed may be a candidate to succeed himself, and unless he requests otherwise in writing, the clerk shall place his name on the official ballot without nomination. In any such removal election, the candidate receiving the highest number of votes shall be declared elected. At such election if some other person than the incumbent receives the highest number of votes, the incumbent shall thereupon be deemed removed from the office upon qualification of his successor. In case the party who receives the highest number of votes should fail to qualify within ten days after receiving notification of election, the office shall be deemed vacant. If the incumbent receives the highest number of votes, he shall continue in office. The said method of removal shall be cumulative and additional to the methods heretofore provided by law." (Quoted in Beard, "Readings in American Government and Politics.")

(*b*)

STATISTICS ON USE OF THE RECALL

The percentage of names necessary to make effective a recall petition varies in different cities. For example,

Twenty per cent is required in the recall of any county elective officer of any county in California by a general law passed by the legislature in 1911, and of elective officers in the municipalities of Berkeley and Palo Alto in California; Fort Worth, Texas; Denison, Texas (provision is made for the recall of the mayor only); St. Joseph, Mo.; Grand Junction, Colo.

Twenty-five per cent is required in Los Angeles, San Diego, Pasadena, Alameda, Santa Cruz, Riverside, Santa Barbara, and Richmond, in California; Greensboro, N. C.; Austin, Palestine, in Texas; Lewiston, Idaho; Haverhill, Mass.; Gardiner, Maine; Seattle, Wash.

Thirty per cent is required in San Bernardino, Cal., and Colorado Springs, Colo.

Thirty-three and one-third per cent of the vote cast in the city for all candidates for governor at the last preceding general election is required in the municipalities in Wisconsin.

Thirty-five per cent is required in Wilmington, N. C.; Dallas, Amarillo, and Marshall, Texas; Tulsa, Okla.

Forty per cent is required in Santa Monica and Long Beach, Cal.

Fifty-one per cent is required in Fresno, Cal.

Seventy-five per cent is required in municipalities in Illinois by a general law passed by the state legislature.

(*c*)

EXAMPLES OF USE OF THE RECALL

Los Angeles, 1904. Member of common council.	Recalled.
Los Angeles, 1909. Mayor. Resigned to prevent recall.	
Junction City, Oregon, 1909. Mayor.	Recalled.
Estacata, Oregon, 1910. Mayor and all councilmen.	Recalled.
Ashland, Oregon, 1910. Mayor.	Not recalled.
Dallas, Texas, 1910. Member of School Board.	Recalled.
Seattle, 1911. Mayor.	Recalled.
Tacoma, 1911. Mayor.	Recalled.
Portland, Oregon, 1911. Member of city council.	Recalled.
Tacoma, 1911. Four commissioners.	Two recalled and two not recalled.

CHAPTER VIII

POLITICAL PARTIES

A POLITICAL party is a body of persons organized to support and further certain public policies and principles of government.

Definition and application of term.

The term is popularly applied to any body of persons organized for the above purpose, whether such persons are members of the electorate or not (as the suffragist "party," which may be composed wholly of women), but the political parties with which we are concerned are those which are made up of groups of the electorate, those which are groups of voters organized to support and further their respective policies.

Membership in a political party is an entirely voluntary act on the part of the voter. He is free, when qualified to exercise the suffrage, to join what party he will. He is free, if in time the principles of his party cease to represent satisfactorily his ideas, to leave one party and ally himself with another. If, again, no organized party suits his ideas, he is free to remain outside of party organization entirely, or he may try to organize a party of his own.

Membership voluntary.

Not only is the individual free of restrictions in his choice of political party, but political parties themselves have occupied a peculiarly free position in respect to the law. Political parties have been considered as voluntary associations of citizens for their own purposes; the parties could make their own rules and regulations and could manage their own campaigns, all without state interference.[1] They have been extra-legal institutions, growths not foreseen or provided for by the fundamental law of the state.

Political parties are extra-judicial bodies.

[1] In the United States, recent primary laws in the various commonwealths have amounted to a recognition of the existence and operation of parties.

In autocratic countries, such as France under the old régime, the mass of the people had no share in the government, their opinion with regard to the public policy was neither asked nor desired, and the public union and organization of groups of citizens to express hostility to the king's ideas would have been considered rebellion and would have been prevented by force.

Parties not permitted in autocracies, but naturally developed by democracies.

Democracy changed all this state of affairs. The control of public policy was intrusted to representatives of the people. Liberty of thought and speech was the accompaniment of the ballot. With such control of public policy and such liberty of thought and speech it was speedily apparent that sincere men differed widely in their judgments of how their nation should be governed. They differed on questions of foreign policy; they differed on questions of internal policy, on matters of education, taxation, religion, or the like. And as strong, sincere men were licensed to write and speak their thoughts, each gained for himself a certain following of voters who were influenced by his arguments and were willing that the nation should be guided according to his ideas. The next step was simple. Inasmuch as government is always a government by persons, the followers of a strong, sincere man of outspoken political convictions banded together, organized, to put their spokesman in a position in the government where he might force a trial of his principles.

Such, sketched very briefly, is the natural development of political parties. The necessary premises are democracy with its accompanying freedom of thought and speech. Given democracy, the development of political parties was inevitable.

The differences between the convictions with regard to public policy are naturally greater and more persistently evident in the presence of great and fundamental issues; hence, it is in the time when such issues are presented for decision that great political parties commonly have their origin. The various individuals who oppose a policy tend to subordinate their minor

differences for the common strength in opposition, and on the other hand those who support the policy are liable to combine for the same purpose.

Political parties formed in the presence of great issues.

Just this process is to be noted in the origin of the great parties in the history of England and the United States. In England the great issue involved in Parliament's disregard for the principle of legitimacy in calling William of Orange to the throne of England in 1688 was responsible for clearly defined parties, the Tory party (those who favored legitimacy and the recall of the Stuart house to the throne) and the Whig party (those who favored the supremacy of Parliament). In the United States, during the administration of our first President, the great issue between those who favored a strong central national government and those who emphasized the rights of the individual and opposed granting strong powers to the central government developed respectively the Federal and the Anti-federal (Republican) parties. Again, at a later period, the great issue of slavery caused a new cleavage and resulted in the Republican and Democratic parties.

The nature of the issue on which political parties divide, and the relations which political parties bear to each other, have a great effect on peace and security within the state.

Importance of the nature of the issues.

In the early days of democracy statesmen bewailed "factions" (*i.e.* political parties), not realizing their inevitability and believing them certain to arouse civil war. Although democracy is yet young, men have come to regard political parties formed on certain lines and operating under certain conditions as not only inevitable but valuable.

In general, the line of cleavage between political parties should never be on racial, religious, or social grounds. Each party, if such line be drawn, believes that the success of its opponents means its own oppression or extinction, and under such belief will fight to the death. If such lines do not result in actual armed rebellion, yet a rancor is excited which inevi-

tably impedes the government in the exercise of its functions and is an ever present sore that may spread to the whole body politic. Again, the members of each political party must tacitly or avowedly recognize that their opponents are sincere in their beliefs, capable of conducting the government if successful, and as patriotically devoted to the true welfare of the state as themselves. Here, too, if the members of a political party do not have this tacit or acknowledged recognition of their opponents' good faith and patriotism, they may feel justified in secret intrigue or in open rebellion.

With the succeeding years in the development of democracy the conditions under which political parties strive for supremacy are becoming better and better. Elections are lost without bitterness, indeed with a philosophic acceptance of the will of the majority, and with a realization that the opposition has just as much at stake in attempting to further the prosperity of the country at large as any other party.

There are many issues which are suitable as a line of cleavage between parties, after barring out racial, religious, and social issues. Economic questions, as the treatment of great corporations; financial questions, as the raising of money for the expenses of government by certain kinds of taxes; policy toward outlying possessions, as colonies or territories; — these are issues which allow honest differences of opinion and yet do not foster that bitterness which would surely be excited by racial, religious, or social questions. These are issues on which political parties may divide without prospect of destroying peace within the state.

Issues on which political parties may properly divide.

Although political parties were unforeseen and unprovided for by the framers of modern democracies, were discountenanced and feared by democratic statesmen in the early days of democracy, they are now commonly recognized as an essential element in the system of modern democratic government. Political parties, born of great national issues, have continued to exist after

Political parties continue to exist after great issues because of value to state and to individual.

those issues have died away, because they have been found necessary for democratic government in modern states.

On the one hand, it is by means of party unity that the various separate departments of government are unified in their policy and operation. The party in power commonly controls the various branches of the government, so that men of the same political opinions, bound by allegiance to the same political group, are coöperating in the varied business of government. On the other hand, political party organization on a national scale, as in England and the United States, has accomplished more than any other agency to educate the voters and acquaint them with the questions of the time. In the United States the political parties have knit together the various sections of the vast extent of the country, doing a service no other agency could have done so efficiently. Further, the political parties have roused popular enthusiasm and inspired the people to register their votes at the polls, thus insuring an approximately accurate expression of the popular will. In these ways political parties have actually formed the machinery by which democracy has operated.

Not only has the political party system been valuable to the state, but it has also been valuable to the individual voter. Democracy assumes that government is to be conducted in accordance with the will of those governed: the political party system furnishes the means by which the will of the governed is made known and put into effect. The party system has furnished the individual voter with the means to make his opinions known and his vote count. The voters in a political party are as partners in a coöperative company. Each partner is expected to contribute his whole political ability to the company and to work in harmony with his colleagues. The political party is a combination of the political acumen and the voting strength of its members for the purpose of controlling the government and putting its political theories into practice. A voter can accomplish nothing single-handed, but associated with a party he may gain the influence to sway the policies of government by the election of representatives who support his views.

Thus political parties have continued to exist for the advantages cited above, even after the great issues which gave them birth have disappeared in history. Political parties persist because they have become necessary both to the state and to the individual.

In considering the present status of political parties in various nations, a sharp division may be drawn between conditions in England and the United States, on the one hand, and the states of continental Europe, on the other. The share which political parties have in the governmental system is important in all modern states, but political parties have developed in two radically different ways, with resulting differences upon their relations with the governmental system.

Political party conditions in England and the United States different from those in continental democracies.

In the states of continental Europe the various degrees of political opinion tend to be reflected in a bewildering number of different political parties; in England and the United States the voters have tended to rank themselves ordinarily in one or the other of two great parties of national scope. In the states of continental Europe each election is contested by candidates of eight or ten or a dozen opposing parties; in elections in England and the United States the prominent candidates stand as the nominees of two great nation-wide parties.

The results of this difference between the development of the political party system affect fundamentally the operation of government. In the states of continental Europe the parties are often not national in character, but sectional or local. Men are elected for their own merits rather than for any national policies they may favor. Local issues are liable to determine the election of a member to the national legislature. Representatives thus elected have no bonds of common policy with their fellow-representatives from other districts, so that, when they reach the national legislative house, they do not find any considerable number of fellow-members pledged to general policies

Effect of continental conditions on the government.

similar to their own. In the legislature such members either gravitate to one of the several political groups they find there already loosely formed, or among themselves form a new group. Thus the legislative body consists at the very outset of a number of small groups composed of members loosely allied in political interest and bound by no strict party allegiance. Rarely does any one group hold an actual majority of votes in the legislature. Great difficulty of legislative action logically follows. All measures must be compromise measures, must be framed to please enough of the different groups to insure a majority vote.

In those states where the ministry which conducts the government is dependent upon a majority in the legislative body, as is the case in France and Italy, an added difficulty arises. Each ministry is a coalition ministry, a ministry whose members are drawn from several groups to insure a majority of votes for support. Experience has shown, however, that a ministry thus formed rarely coöperates harmoniously in the work of the government. The separate members act as rivals rather than as colleagues, each member being able to break up the coalition of parties in the legislative body by influencing the representatives of his own group and thus to destroy the parliamentary support for the whole ministry. Intense personal bitterness is often aroused. Ministries are commonly very short-lived, with the resultant weakening of governmental efficiency.

In those continental states where the ministry and the conduct of government are not directly under the control of the parliament, as is the case in Germany, the political party conditions do not disturb the course of the government so seriously. The minister is responsible to the monarch and need not resign when he loses the support of the legislature. He often finds himself, however, at odds with his parliament, is indeed sometimes severely arraigned by its members. In important measures which must have parliamentary sanction the same necessity for compromise exists as in the other continental states.

The conditions in continental European states, as outlined

above, are by no means wholly bad. A strong argument can be advanced for the theory that these states present a more ideal form of democracy as such than the states in which only two parties contend for power. It may be argued that men do not naturally divide into two parties; that the many parties in these continental states most truly represent the various shades of political opinion throughout the electorate. In matters of legislation, compromise measures are more truly democratic than the measures forced upon a reluctant minority by the votes of the majority. A measure that has endured the critical scrutiny of the various elements of a coalition ministry, and is passed by the support of the parliamentary groups from which those elements come, must be a good measure, whereas it is conceivable that a very bad measure may be forced through the legislature by the majority in a two-party body.

Defense for continental conditions.

For the actual continuous and efficient operation of government, however, the two-party system that has developed in England and the United States is better adapted. In the elections in each of these countries the candidates of two prominent parties of nation-wide organization contend for election, and the issues before the electorate are national issues. The representative elected finds in the legislature a united body of political brethren elected on the same issues, having the same general political bias as himself. In England, if the representative is of the majority party, he finds that the cabinet (the actual executive) is composed of the leaders of his own party, men who had a part in defining the very issue on which he himself was elected. He finds that the cabinet members coöperate harmoniously as colleagues in the conduct of their several departments, that each measure introduced by the cabinet has the united support of its members, and that his party in Parliament customarily supports its leaders in giving its sanction to such legislation as they introduce. Thus the party system provides for the election of men on national issues, unifies the

Superior efficiency of the two-party system.

various branches of government, and assures the actual executive of adequate legislative support for all ordinary business of government. When great crises arise and the ministry loses the support of its party in Parliament, it resigns to make way for a ministry of what was the opposition, or it has Parliament dissolved and a new election ordered in the hope that a new election may prove that a majority of the electorate favors its policy. In the United States the elected chief executive is allowed to choose his own cabinet, the members of which are, of course, of political convictions similar to his own. Thus it is insured that the main departments of the government will be carried on in accordance with one political policy. Furthermore, the chief executive will commonly find a majority of the members of the legislature of the same political party as himself, thus insuring a cordial coöperation between the executive and legislative branches of the government. Even if his party is in the minority, he will have a body of considerable numbers to support his policies in the legislature, and the force of public opinion is such that under such circumstances the majority party will almost always go halfway to meet the wishes of the chief executive. Thus, in the United States, the political party system serves to unify the various branches and departments, to create the connection between them necessary for the efficient functioning of government.

Necessity for organization.

In the relatively early days of democracy, when it became evident that political parties were the inevitable agencies by which the popular will was to be made known, members of these parties saw the value of efficient organization to accomplish their purposes. The more important the share the parties were to take in the government, the more necessary the organization.

Organization at the present day is recognized as inevitable. Where the state is vast in extent, where the number of offices under the control of the electorate is great, where the separation between the branches of government is sharply drawn and only to be bridged by the party allegiance, in such a state the political

party can serve great ends, both for the state and for itself, by careful organization. These are the conditions to be noted in the United States, and, in consequence, it is in this country that party organization has most fully developed. In England, a relatively small country with comparatively few elective offices outside of the parliamentary seats, party organization did not begin so early and has not progressed so far. In recent times, however, political leaders have taken a leaf from American experience, and to-day each of the two great parties has a central committee with headquarters in London and hundreds of local committees in election districts throughout the country. In continental states national party organization is practically unknown. Candidates often conduct a personal rather than a party canvass, and seek election upon local issues and personal reputation rather than upon national issues and national party affiliations.

Purpose of organization.

The primary purpose of party organization is to nominate and elect party candidates. The definition of a political party was: A political party is a body of persons organized to support and further certain public policies and principles of government. To further its policies a party must elect to office men who believe in such policies; an efficient organization will add much to a party's chances of success in thus electing its sympathizers. This desire to elect its partisans and thus influence the government is the source of the complex and efficient organization of the political party in the United States.

Functions of organization.

How does the organization proceed in its effort to win elections?

First, it educates the voters. It presents the national issues to the people, instructs them with regard to the arguments for or against each question proposed. Naturally, a particular party emphasizes its own side of the question, but a voter is always free to listen to the speeches or to read the articles by men of both parties and thus get the arguments on each side. This education of the voter is a service to the party, on

the one hand, and is a service to the state, on the other. The intelligence with which the average voter casts his ballot on election day is largely due to the amount of education he has gained from the orators or pamphleteers of the political parties.

Second, the political party makes it its business to arouse and maintain the enthusiasm of the electorate at the time of an election. By meetings, speeches, parades, it tries to inspire each voter with enthusiasm for its cause and its candidate. Here, again, the party is not only doing itself but doing the state a favor. The success of democracy depends upon the accuracy with which the public will is ascertained. In so far as the political party inspires men to go to the polls and register their will, they perform a real service to the state.

Third, the political party seeks to attract to its membership the new voters. Each year, with the coming of age or the attainment of citizenship, an appreciable number of new members is added to the electorate. Each political organization puts forth efforts to enroll these new voters under its standard.

Thus the political party instructs the electorate, inspires the electorate with enthusiasm, and proselytes among the members of the electorate, all with the fundamental end in view of electing its candidates to office and thus controlling the government.

Organization most complete in United States.

In completeness and efficiency of organization the political parties of the United States excel those of any other state. In general, the system may be likened to a huge pyramid whose base is composed of the numerous "primaries" and whose apex is the "national convention."

Characteristics of organization.

The primary is a meeting open to all the qualified voters of a specified political party in the smallest subdivision of the state (as the district, county, or precinct) in order to

(1) nominate the candidates of the party for offices in the district;

(2) choose a standing committee to manage the campaign for the district; and

(3) select delegates to the party meetings appointed for the larger area of which the district is a subdivision.

The delegates from the primaries meet in a convention of a larger area, as a congressional district, and proceed to

(1) nominate party candidates for offices in this larger area;

(2) appoint a committee to manage the campaign for this larger area; and

(3) select delegates to the state (commonwealth) convention of the party.

The state (commonwealth) convention in turn meets to

(1) nominate candidates for offices in the commonwealth, as governor, lieutenant governor, etc.;

(2) appoint a committee to take charge of the state (commonwealth) campaign; and

(3) select (once in each four-year period) delegates to the national convention.

The national convention, the apex of the system, meets to draw up a declaration of policies and principles (*platform*), to nominate candidates for President and Vice President, and to choose a committee (the *national committee*) to superintend the national campaign. This national committee consists of fifty-one persons, one for each state and territory and one for the District of Columbia, the members being proposed to the convention by the separate state and territorial delegations.

The above method is simple and provides a theoretically ideal method whereby the will of the rank and file of the party shall be carried out. From the primary up to the national convention of the party each gradation of meeting is dependent upon and linked with each other gradation.

It will be at once noted that the most important duty of the primaries and conventions is the duty of nomination. Each party's primaries and conventions thus determine whom they consider to be best fitted to carry on the government. In other words, the party organizations completely control the selection of candidates for the various governmental offices.

Nomination by party organization.

This method of selection, so familiar to us, is a new development in politics. In England, until the present generation (when the party system as it exists in the United States is becoming installed), candidates commonly offered themselves for election, asking for support on the basis of merit or personal position in the community. Such is the practice in most of the democratic states on the continent now. Again, candidates have been put before the electorate by a group of men prominent in a community, acting secretly or openly in advocating their election. Such has been the practice in parts of England and Scotland, such is the practice now in districts of France, and, previous to the country-wide development of the party system, such was the practice in many communities of the United States. In the United States at present, however, public opinion condemns the practice of having a candidate proposed by a group of the electorate, being suspicious of the motives behind the candidacy, and commonly looks upon the man as presumptuous who without previous support declares himself a candidate. The people in this country feel that it is more truly democratic for them to pick out personally the candidates for office. The organization of the political parties is theoretically such as to give each member of the electorate an opportunity to have a voice in the selection of such candidates. After a candidate is selected, he becomes the representative of his party and is entitled to feel that he has the united support of the members of that party. Such, briefly outlined, is the theory whereby the nomination of candidates by the political party organization is accepted by the electorate as a whole in the United States.

Importance of character of primaries in carrying out the functions of party organization.

If the party primaries are openly and fairly conducted and each voter of the party does his share in the selection of candidates, committee, and delegates, it is certain that the candidates, committee, and delegates will be truly representative of the party of the district, county, or precinct. It is certain also that each convention of the larger areas will likewise be truly representative

of the will of the party majority. The whole system relies for its truly representative nature upon the character of the primaries.

Originally the control and operation of the primaries was left entirely in the hands of the political parties on the theory that the state or the commonwealth had no right to dictate how the parties should choose their candidates, but such grave abuses arose that a reform was necessary. Experience proved that in many districts, especially those of the cities, the voters of the party were too indifferent to attend the primaries. Thus the opportunity was given to a class of professional politicians and their followers to control these primaries, the key to the whole system. The primaries, being self-constituted bodies able to make their own rules for admission and procedure, rapidly fell under the complete control of a small clique of politicians who operated them to their own advantage. No such thing as a popular selection of candidates, committee, and delegates existed. This process of nomination consisted in the preparation of a list of names ("slate") by the district boss and its immediate adoption by his hangers-on. The best citizens were repulsed by the nature of the proceedings and by the character of the leaders, so that they remained away from the primaries in ever greater numbers. Responsible and efficient men refused to accept office at the dictation of the professional politician and boss, leaving the offices to be filled by unscrupulous men of little ability, willing to repay by appointments, contracts, and the like the clique that had put them in office. Thus was created the political *ring*, an exclusive combination of politicians to traffic in offices and their emoluments, and hence resulted a large proportion of the *graft* evil.

Former evils in system.

The situation as described above was by no means universal, but did exist to a greater or less extent in most of the good-sized cities of the country. It became common enough to arouse a widespread demand for reform.

The first step toward reform was taken when the commonwealths, abandoning the theory that the parties' methods of

nomination were of no public concern, one after another passed laws regulating the primaries. The purpose of these laws was to insure a fair and open primary in which the candidate selected was the free choice of the members of the party. All of the commonwealths now have primary laws, usually providing for the dates of the primary elections, for rules similar to those which govern regular elections, for the method of nominating candidates and delegates, and for regular ballots printed at public cost. In general, practically the same measures are now taken to safeguard the primaries as are taken to safeguard the elections.

State supervision of primaries to correct evils.

With state regulation of the primaries and the removal of the most glaring abuses came a feeling on the part of the voters at large that the conventions of the larger units were not all that they should be. The voters argued logically that if they were competent to choose delegates to the conventions, they were also competent to do the chief work of those delegates, namely, the nominating of the party candidates for offices in the larger districts. As a result of this argument came the introduction of a system of *direct nominations* or *direct primaries*.

Direct nominations.

Under the direct primary or direct nomination system the members of the party, instead of selecting party delegates for a convention, themselves vote for the candidates for the various offices in precinct, district, and commonwealth. The direct-primary or direct-nomination movement has spread rapidly, especially in the West and South. It has operated in some commonwealths to do away entirely with the convention and that system of nomination. In other commonwealths the convention has been retained, but its functions are much limited.

Another method of insuring to the electorate its choice in the matter of candidates is the method of *nomination by petition*. In a number of commonwealths the laws provide that a specified number of voters may, by signing a nomination paper or petition paper, constitute the

Nomination by petition.

person named in such paper a candidate for an office designated. Such procedure is in most cases intended to placate the independents, those who refuse to declare their allegiance to any political party, and those who disapprove of the existence and operations of organized political parties. This method of nomination is often used by candidates who have been disappointed in the primaries and who believe that a recourse to the whole electorate will elect them.

The basis of true and lasting reform.

Only one reform will insure a thorough and beneficial change in the system, however, and that is a reform that is needed in all democratic countries to-day. The electorate must be further aroused to a sense of its duties and responsibilities. No system can be devised which will operate without the coöperation of the electorate. State regulation will not make the electorate attend the primaries, and direct nominations will be circumvented by the professional politicians and their allies if the mass of the electorate neglects to go to the polls. The indifference of the electorate is the root of the evils of the system. Reform waves sweep the country at times and show what an awakened electorate can accomplish, but reform waves are the exception. The class of professional politicians, always alert to the opportunities afforded by the system and concentrating all attention on getting in controlling offices, continue even under the various regulations that have been introduced to use the primaries to achieve their ends. "Politics" and "politician" have come to have an evil significance which ought by no means to be attached to them. When the functions of the electorate are understood and regularly and intelligently exercised, we shall soon see the brood of petty politicians swept out of office and men of proved capacity called to places of responsibility and service in the state.

Chap. VIII. Statistics and Illustrative Citations

1

Political Parties in Modern States

State	Parties Represented in Upper House	Members Elected	Parties Represented in Lower House	Number Elected (1912)
France	Radical and Radical Socialist	156	Democratic "Left"	73
	Republican	55	Radical "Left"	113
	Independents	19	Independent	25
	Republican Unionist	58	Progressive Republican	76
	Right (various shades of opposition)	19	Radical Socialist	148
		307	Republican Socialist	32
			Socialist	74
			Liberal	32
			Right { Nationalist, Royalist, Bonapartist }	19
				592
Germany	(Bundesrath is wholly appointive)		Center	90
			Conservative	45
			National Liberal	44
			Social Democrat	110
			Radicals (and moderate Radicals)	41
			Poles	18
			Anti-Semitic	11
			Various	38
				397
Great Britain	(Membership chiefly hereditary)		Ministerial supporters 1910 { Liberal, Labor, Nationalist }	272
				42
				84
			Total	398
			Opposition { Conservative and Unionist }	272
			Total	272
United States	Democratic	51	Democratic	290
	Republican	45	Republican	127
		96	Progressive	18
				435

2

(a)

PRIMARY ELECTIONS ACT. MICHIGAN, JUNE 2, 1909

The people of the State of Michigan enact

When candidates nominated by direct vote.

SECTION 1. Whenever any primary election shall be held in this State or in any city, county or district in this State, pursuant to the provisions of this act, the nomination of candidates for the offices herein named, by each political party, shall be made by direct vote of the enrolled voters of such political party in the State or in any district, county, or city in this State, as the case may be, in the manner hereinafter provided.

Primary elections, how conducted, etc.

Provisions applicable.

SEC. 2. All primary elections shall, except as herein otherwise provided, be conducted and regulated as near as may be in every particular as prescribed by law for the regulation and conduct of general elections. The provisions of the general election law shall apply to primary elections with respect to the giving of notices of enrollment and election, in fixing places for holding such elections, providing the ballot boxes with the necessary equipment and supplies, and all officers required to perform similar duties under the general election law shall be required to perform such duties under this act, with like power and compensation. All expenses of primary elections shall be defrayed from the same funds from which are defrayed the expenses of an election.

Expenses, how defrayed.

"Primary," term defined.

SEC. 3. The words "primary" or "primary election," as used in this act, shall be construed to mean an election for the purpose of deciding by ballot who shall be the nominees of political parties for the offices named in this act or for the election by ballot of delegates to political conventions. The words "qualified elector" shall be construed to mean an elector who is qualified under the general election law, to vote for a member of the legislature in this State.

Voter must be enrolled.

SEC. 4. No person shall be permitted to vote at any primary election held in this State unless he shall have been enrolled, in the manner herein provided,

as a member of a particular political party, except in cases of new political parties as hereinafter provided.

When voters to become enrolled.

The voters in the various political parties shall be afforded an opportunity to become enrolled voters of the particular political party with which they are affiliated on the first Monday of April preceding the September primary election, whether they be registered or not: Provided, That in the year nineteen hundred ten, in cities operating under the direct nomination system having an election in April, such opportunity to enroll shall be afforded, also, on the second Monday of January. It shall not be necessary for the electors who were enrolled under any previous act to again enroll under the provisions of this act. . . .

Proviso, cities.

Change of party affiliation.

SEC. 11. Whenever an enrolled voter has changed his party affiliation and desires to be enrolled as a member of another political party, he may personally make application only on enrollment day for re-enrollment to the enrollment board, and said board shall thereupon re-enroll the name of said enrolled voter, and at the same time draw a pen mark through the name of said enrolled voter as previously enrolled and opposite said name as previously enrolled, shall write the word "re-enrolled" and the date of said enrollment. . . .

General primary election, when held, officers, etc.

SEC. 16. A general primary election, for all political parties, shall be held in every election precinct in this State on the first Tuesday after the first Monday of September preceding every general November election, at which time the enrolled voters of each political party shall vote for party candidates for the office of Governor, Lieutenant Governor and United States Senator: Provided, That no nomination for the office of United States Senator shall be made unless such official is to be elected at the next session of the legislature.

Congressman, nomination of.

SEC. 17. In every congressional district, in this State there shall be nominated at the said September primary election, by direct vote of the enrolled voters of each political party within such district, a party candidate for representative in Congress.

State senator.

In every senatorial district in this State there shall be nomi-

nated at the said primary election, by direct vote of the enrolled voters of each political party within such district, a party candidate for State senator. In every representative district in this State there shall be nominated at the said primary election, by direct vote of the enrolled voters, of each political party within such district, a party candidate or candidates as the case may be, for representative in the State legislature. In every county in this State where nominations are made by direct vote there shall be nominated at the said primary election by direct vote of the enrolled voters of each political party within such county, party candidates for county offices to be voted for at the November election following. In every city of the State having a population of seventy thousand or more, there shall be nominated at said September primary election or on the third Tuesday preceding any April election, whenever the city election in said cities is held in April, by direct vote of the enrolled voters of each political party within such city, party candidates for city offices. In any city in this State having a population of less than seventy thousand in which the voters have decided in accordance with the provisions of this act, in favor of direct nominations of party candidates for city offices, when such offices are to be voted for at the November election following, there shall be nominated at the said primary election by direct vote of the enrolled voters of each political party within such city, party candidates for city offices.

Representatives.

County officers.

City officers.

SEC. 18. There shall also be elected at the September primary, by direct vote of the enrolled voters of each political party in said county, as many delegates in each township, ward or precinct, as the case may be, as such political party in such township, ward or precinct shall be entitled to by the call issued by the county committee of such political party for the county convention thereafter to be held by such political party within said county in that year for the purpose of electing delegates to the State convention called for the purpose of nominating candidates for State offices. In case of any vacancy in any delega-

Delegates to county convention.

Vacancy.

tion from any election precinct, township, or ward, to the county convention, such vacancy shall be filled by the delegates present from the ward or township in which the vacancy occurs. The State central committee of each political party shall, at least thirty days before the September primary herein provided for, certify to the board of election commissioners of each county and to the chairman of the county committee of such party, the number of delegates to which such county shall be entitled in the State convention of such party, and the said State central committee shall apportion such delegates to the several counties in proportion and according to the number of votes cast for the candidates of such party for Secretary of State in each of said counties respectively at the last preceding November election. The name of any candidate for delegate to the county convention shall not be printed upon the official primary election ballot, but one or more of such names may be placed on such ballot by printed slips pasted thereon by the voter. . . .

Number of delegates, who to certify.

Names not to be printed on ballot.

Signatures required for certain officers.

SEC. 25. To obtain the printing of the name of any candidate of any political party for United States Senator or for Governor or Lieutenant Governor upon the official ballots of such political party for any primary election held in the State, pursuant to the provisions of this act, there shall be filed with the Secretary of State nomination petitions, signed by a number of enrolled voters residing in the State and who are enrolled in the party enrollment of said party, equal to not less than two per centum nor more than four per centum of the number of votes that such party cast for Secretary of State at the last preceding November election.[1]

Nomination petitions, form of.

SEC. 29. All nomination petitions shall be in the following form:

We, the undersigned, enrolled voters (or if a new party, qualified electors) of the .....
..... party of the city of .....
..... or the township of .....,

[1] In following sections, similar provisions are incorporated for nominations to state, city, county, and district offices.

in the county of ..... and State of Michigan, hereby nominate ...., who resides at No..... Street, city of ....., or in the township of ....., in the county of ..... as a candidate of the .....party for the office of ....., to be voted for at the primary election to be held on the ....day of ....., as representing the principles of said party, and we further declare that we intend to support the political party named herein.

Name.	Residence.	Street number (in cities having street nos.). Date of signing.

Primary elections, how held, etc.

SEC. 32. All primary elections for the nomination of party candidates for office shall be held by election precincts the same as general elections are held, and the polls thereof shall be kept open in the respective precincts for the same length of time: Provided, That in any city of five thousand population or over, the polls of the primary election shall be kept open until eight o'clock P.M. standard time, and in cities having a population of two hundred thousand or more the polls shall be kept open until ten o'clock P.M., standard time: Provided further, That the township board of any township or the common council of any city of less than five thousand population may direct that the polls be held open until eight o'clock P.M., standard time. . . .

Proviso, certain cities.

Further proviso.

Who declared nominee.

SEC. 39. The candidate of each political party for nomination for any office who receives the greatest number of votes cast for candidates for any such office as set forth in the returns or as determined by the board of canvassers on the recount by it of said ballots, shall be declared the nominee of that political party for said office at the next ensuing November election, or at the next city election, or at the next election for United States Senator, as the

case may be, and the board of canvassers shall forthwith certify such nominations to the respective boards of election commissioners affected thereby: Provided, That in the case of a candidate for the office of United States Senator, the Board of State Canvassers shall forthwith certify the result of the primary election to the Secretary of State, and the Secretary of State shall certify said result to the next succeeding legislature on the first day of the session. . . .

Proviso, United States Senator, etc.

State convention, when held, etc.

SEC. 43. The State convention of all political parties for the nomination of candidates for State offices and the selection of State central committees, if such committees have not been selected by previous conventions held during the same year, shall be held within forty days after the September primary, but not less than ten days after the day appointed for the meeting of the Board of State Canvassers for the purpose of canvassing the primary election returns mentioned in this act. The particular day and the time and place of meeting shall be designated by the State central committees of the various political parties in the calls for said State conventions, which calls shall be issued at least thirty days prior to the first Wednesday in September preceding a November election. . . .

(*b*)

PRIMARY ELECTIONS

Presidential primaries were held in 1912 in the following commonwealths:

California	New Jersey
Georgia	New York
Illinois	North Dakota
Maryland	Ohio
Massachusetts	Oregon
Missouri	Pennsylvania
Nebraska	South Dakota
Wisconsin	

State primaries (for governor, United States senators, United States congressmen) were held in 1912 in the following commonwealths:

Georgia	Missouri
Illinois	New Hampshire
Kansas	New York
Kentucky	Washington
Louisiana	Wisconsin
Michigan	Wyoming

(1913) New Jersey

CHAPTER IX

LOCAL GOVERNMENT

In the preceding chapters we have dealt especially with the central government of a state. In none but the smallest states, however, as the republic of San Marino, does this central government directly administer the affairs of local areas. In states of any appreciable size the details of government of portions of the area of the state are administered by local governing bodies. This chapter deals with the government of these local areas.

Local government.

Considered from the viewpoint of their systems of local government, the prominent states may be divided into two main classes, (1) unitary governments and (2) federative governments.

Two types of local government.

Unitary governments are distinguished by the fact that all authority for local officials in local areas proceeds from and rests upon the central government. Local governing officials and bodies are not trusted with independent powers; their acts are always subject to the scrutiny of an agent or representative of the central government of the state; their very existence is in large measure determinable by the central government. New local boards or functionaries may be created by the central government for local areas designated by that government, or old local boards or functionaries may be arbitrarily abolished or displaced. All local government is subject to the will and action of the central government of the whole state. Such system, to be described in more detail later, is to be noted in France, Italy, and England.

Unitary governments.

Federative governments are distinguished by the fact that under

the constitution of the state certain powers of independent organization and action are guaranteed to the local governments. In their own constituted province, local governing bodies in a federative government are free to act according to their best judgment without reference or appeal to the central government. In local affairs, the local governing bodies in general jealously protest against any encroachment on the part of the central government.

Federative governments.

In a sense the local governing bodies do not consider themselves as subordinate bodies at all, but as free and independent governments operating without interference in all local matters. They are inclined to resent the term local government as applied to them, because such application implies a subordination to the wider central government, which subordination does not under the constitution exist. They argue that the same constitution which creates the central government in a federative state guarantees to the local areas governmental rights forever free from infringement or impairment, and hence in the exercise of their powers they are as free and untrammeled as the central government itself. This argument is well based, and yet the fact remains that the local government may be distinguished as such by the fact that it exercises control over only a portion of the territory and people of a state, whereas the central government exercises control over *all* the territory and people of a state. However independent the local government's powers as guaranteed by the state constitution, such powers extend to but a limited portion of the state as compared with the statewide authority of the central government.

Prominent federative states in which local governments are thus constituted with independent powers are Switzerland, Germany, and the United States.

The determination of the boundaries and extent of the local areas within a state is (1) in unitary states commonly the result of the action of the central government, and (2) in federative states commonly a result of historical evolution.

Areas of local government.

Thus in France the largest subdivisions of the state are the *départements*, which are territorial areas arbitrarily marked out by the central government for administrative convenience. Thus likewise the *arrondissements* and cantons in France are arbitrary divisions. In England, boroughs, urban or rural districts, sanitary districts, etc., may be determined arbitrarily at the will of the central government.

Areas of local government in unitary governments.

In federative governments the historical process by which the central government evolved is shown by the local areas. In Switzerland each of the cantons had a separate governmental existence before the union into one state. In Germany the mixture of kingdoms, principalities, duchies, and free cities in its local areas shows even more decidedly from what a heterogeneous collection was welded the German state. In the United States the thirteen colonies which revolted from England became thirteen commonwealths in the state, and the commonwealths which have been added since have in many cases had individual histories and organizations before their admission to the Union.

In federative governments.

The present French system of local government may be considered as typical of the unitary type. The territory of France is divided into 86 *départements* for administrative purposes. These *départements* are subdivided into *arrondissements* (362 in number all together), further subdivided into *cantons* (2911 in number all together), and further subdivided into *communes* (36,222 in number all together).

The unitary type system of local government in France.

At the head of each of the 86 *départements* is a *prefect*, an official appointed by the president of France upon the nomination of the minister of the interior in the national cabinet. This prefect exercises a double function: on the one hand he is the representative of the central government of the state, appointed by and responsible to the officials of that central government, and on the other hand he is at the head of the government of the *département*. In his capacity

The *département*.

as agent of the central government it devolves upon him to supervise the execution of the laws of the state, to transmit the instructions and orders of the central government to his subordinates, and to oversee the actions of such subordinates. In his capacity as head of the government of the *département* he is the executive officer of an elected *general council* and has extensive police powers, great authority in sanitary regulations, the nomination of various important subordinate officials, the distribution of the amount of taxes proportionally among the *arrondissements*, and the charge of the construction and maintenance of roads, railways, and canals.

In the exercise of these broad powers the prefect is assisted on the one hand by an *advisory council*, the members of which are appointed by the president of France, and on the other hand by a *general council*, the members of which are elected by universal suffrage from the cantons (each canton contributing one member). The advisory council is at the prefect's hand in cases involving the central government; the general council acts as a check upon the prefect in his administration of the government of the *département*.

The features of government for the *département* are in the main duplicated in the official bodies of the *arrondissements*. The *subprefect*, who is at the head, is both representative of the central government and executive officer of the local government. A district council, elected (like the general council of the *département*) by the cantons, assists him in local matters. The chief business of the local government is to divide among the communes in proper proportion the amount of the direct taxes levied by the prefect and general council of the *département*.

The *arrondissement*.

The canton is of little importance for our purposes. It is a division made for administrative convenience, usually contains about a dozen communes, and is the seat of a justice of the peace. Each canton sends one member to the district council of the *arrondissement* in which it is situated, and one member to the general council of the *département* in which it is situated.

The canton.

The commune, the ultimate administrative unit of the French system, duplicates in the main the features of the *département.*

The commune.

The *maire,* who is at the head, is on the one hand a direct representative of the central government, under orders of the prefect of the *département,* and charged with the duty of promulgating and executing the laws of the central government, and on the other hand is the executive officer of the town or city, in which capacity he has authority over the local police, public works and revenue, acts as registrar of births, deaths, and marriages, and represents the municipality in all ceremonial occasions. The mayor usually is assisted by one or more deputy mayors. Both mayor and deputy mayors are elected by the municipal council from among its own members.

The municipal council is a body elected for four years and consisting of from 10 to 36 members, according to the size of the commune. It has wide powers in matters of strictly local interest.

Thus the typical system of local government in France resembles a series of concentric circles. The commune is the smallest circle, around it extends the canton, around the canton extends the *arrondissement,* around the *arrondissement* extends the *département,* and embracing the *département* is the central government. Through every series of circles extends the authority of the central government, jealously guarded by the agents of that government. The general council of a *département* may have its vote annulled by the president of France, and must have its annual budget approved by him. The general council furthermore is much in the power of the prefect appointed by the central government, for he is the executive head who carries out its votes, signs all requisitions and vouchers, and prepares the budget and all business submitted to it for consideration and action. In the lowest circle of administration we find the same facts: the *maire,* so far as he is agent of the central government, is under the control of the prefect of the *département,* can even be suspended from office for a month by the prefect, for three months by the minister of

the interior, permanently by the president of France. The communal council has much less power of final action than might be thought, for on all important matters (such as financial measures, roads, communal property, etc.) the approval of a superior administrative official is necessary. Furthermore, the prefect of the *département* has the power to suspend the council for a month, and the president of France may dissolve it entirely and order a new election. Local autonomy, as we are familiar with it in this country, is unknown in France. All power is concentrated in the central government.

Local government system in Italy.

The local government system in Italy is in the main copied from that in France. The concentric circles corresponding to *départements*, *arrondissements*, cantons, and communes are in Italy the *provinces*, *circondari*, *mandamenti*, and *communes*. The officials in these various areas closely correspond to those of similar areas in France, but the suffrage is more narrowly restricted in voting for members of the bodies corresponding to the general council and communal council. Furthermore, the *syndics* (French *maires*) of the smaller communes are commonly appointed by the king from among the communal councils. The authority of the central government penetrates each degree of local government in Italy as it does in France.

Local government in England.

England, however, though rightly classed with France and Italy as a unitary government, differs radically in the features of its local government. In the general overhauling of institutions, which began with the reform bill of 1832, local government was reformed. In 1871 a Local Government Board was established as a central supervising body, and the Local Government Act of 1888, followed by the similar and supplementary act of 1894, framed the system of local government as it exists to-day.

The various areas.

Under the present system the various areas of local government are the following: first grade, *counties* and *county boroughs;* second grade, *rural districts*, *urban districts*, and *boroughs;* third grade, *parishes*.

The first division under the central government is composed of two different kinds of units; namely, *counties* and *county boroughs*. The counties may roughly be compared with the French *départements*, but the county borough is unique. The county borough is a city of such size as to be granted the local government of a county.[1] Territorially, a county borough may be and commonly is entirely within the territorial area of a county, but for purposes of local government it is not a part of the county. Thus a county may be large in extent but not include the greater part of the wealth and population within its territorial boundaries, for the reason that the populous and wealthy sections are organized as *county boroughs*. Sixty-one such county boroughs were enumerated in the Local Government Act of 1888, and fourteen have been constituted since that time, the total population of these seventy-five county boroughs being now approximately 11,000,000.

Primary areas.

The counties are further subdivided into *rural districts*, *urban districts*, and *boroughs*. Each of these areas is under the control of the county.

Secondary areas.

The boroughs are incorporated towns, differing from the county boroughs in being to some extent subordinate to the county and in being considered territorially as a part of the county. The boroughs are of great importance in the English system. The town and city population is constantly on the increase at the expense of the rural population, so that at present the 350 boroughs of England and Wales contain one half the total population of the kingdom (outside of London).

The urban district is commonly a borough on a smaller scale. As the name implies, it is a local government area in a somewhat thickly populated district. It differs from a borough mainly in not having a charter of incorporation granting a greater degree of independence in local matters and thus in being more under the control of the county organization.

[1] The term "borough" in English law is used for a town incorporated for purposes of self-government. The word "city" has no place in English law (outside of the city of London).

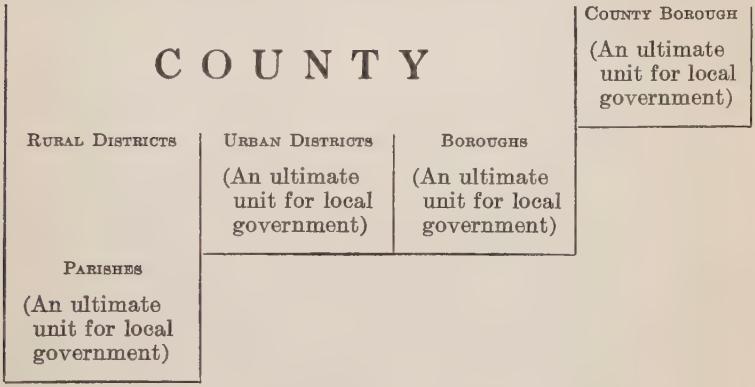
Rural districts are, as the name implies, areas in which the population is more scanty. In these the county authorities wield more power than in either the urban district or the borough.

Rural districts are further divided into *parishes*. These parishes are the weakest and least active elements in the system. They are merely subdivisions of the rural districts, made for convenience in local government.

Lowest areas in the scale.

The following diagram may illustrate graphically the various grades of local government and the mutual exclusiveness of the units in each grade:

Diagram of areas showing grades.



The organization of the government for each of these areas is along the same general lines. The government is in the hands of a council composed of members elected by a wide popular suffrage in the area. The council elects its own executive head, but this executive head has no powers distinct from those of other members of the council, and has no extra salary. The headship of the council is thus to a large extent an honorary office, the holder of which represents the area on ceremonial occasions. In most of the various areas the council also elects, usually from among its own members, aldermen to a number equal to one

Typical local government for the various areas.

third of the council. Here again, however, except for a superior dignity and a longer term of office, the powers of the aldermen do not differ from those of members of the council. The aldermen form a part of the council, and vote and act with them.

Powers of the council and methods of operation.

The various councils exercise both legislative and executive powers for their respective areas. Their powers and functions differ naturally according to the area which they govern. In general, the councils of the various areas have a certain control over the finances by having the right to levy, collect, and appropriate taxes ("rates"), over the police, over highways, sanitary arrangements, municipal businesses and properties, and the like, and over the appointments of a number of subordinate officials. Their important acts are, however, as will be explained, subject to the inspection and approval of authorities of the central government.

Most of the work of these councils is done by means of a series of committees. Inasmuch as there is no separate executive head these committees act as executives in their several assigned fields, and the business of the council as a whole is largely a matter of accepting and approving the reports of the committees. In the county boroughs and the boroughs certain committees occupy the place of managing directors of huge businesses, as where the borough owns and runs a gas plant, a water works, a street railway system, or the like.

Central control of local government.

The control of the central government over the local governing bodies is exercised mainly through the Local Government Board. The Local Government Board audits the accounts of all the local authorities, except those of boroughs, and can disallow any item of expenditure. It can demand reports on any subject connected with its work, has special powers in case of epidemic disease, has an army of inspectors who have the right to be present at the meetings of local bodies (except borough councils). Its approval is necessary for the raising of loans by any local

body (including borough councils), for the purchase or establishment of electric supply plants, gas works, or the like.

In addition to the many and important matters in which the Local Government Board has control over the organs of local government, a number of other matters must be referred to authorities of the central government. For example, in all matters affecting police regulation, the Home Secretary must be consulted; for orders to supply electric light or to build tramways or light railways, the Board of Trade's permission must be gained; to issue orders providing for the suppression of disease among cattle, sheep, or other animals, the Board of Agriculture's approval must be had.

Thus the system, though not so accurately symmetrical as that of the French, has such definite provisions for central control that it must be characterized as unitary. The authority of the central government does extend through the various degrees of local government. However free and independent the local authorities may seem in many affairs, those decisions which affect most vitally the people of the area must be sanctioned by authorities of the central government.

The federative system. Local government contrasted with unitary system.

In federative governments the relations between the governments of the primary areas, *i.e.* the largest and most comprehensive area next to the state as a whole, and the central government are very different from the relations between such areas and the central government in unitary states. These large areas are not organs of the central government, as the French *départements* and Italian *provinces* may be said to be, and they are not in all important matters of local interest under the control of a branch of the central government, as are the local areas in England; on the contrary, these primary areas manage their local affairs, determine their local government, lay taxes, incur indebtedness, and make appropriations, free from the interference of the central government of the state.

Three states of prominence present the federative type of

local government: Switzerland, Germany, and the United States. In all of these the principle is the same — autonomy for the primary areas in local affairs. The nature of the primary areas and the organization of the governments in these areas, however, differ in the various states.

Federative states.

The primary areas in Switzerland are the cantons. Subject to the approval of the central government — approval is always given where no conflict with the national constitution is evident — the cantons are free to organize their governments as they please and to amend their constitutions as they see fit.

Primary areas in Switzerland.

Two varieties of organization are found. In two of the cantons (Uri and Glarus) and four half-cantons (the two Unterwaldens and the two Appenzells) the governing body is the *Landsgemeinde*, an assembly composed of *all* the citizens of the area. This assembly considers and passes or rejects bills, fixes taxes, votes the appropriations, and elects the important officials. In addition to the *Landsgemeinde*, a council (the *Landrath* or *Kantonsrath*), elected by wide suffrage in the canton, administers the ordinary routine business, prepares bills for introduction in the *Landsgemeinde*, votes smaller appropriations, audits accounts, and appoints minor officials. A third body, the administrative council (*Regierungsrath* or *Standeskommission*), usually of seven members, is elected directly by the *Landsgemeinde* and acts as the executive head of the canton.

Local government in the primary areas.

Thus in these cantons one ultimate body, composed of all the citizens of the canton, decides directly upon measures of first importance; an elected council attends to details of administration; and a small elected council acts as executive head.

Of course only a few of the smallest cantons can have a system like the above, for it is impossible in cantons with a large population to have an efficient assembly composed of all the citizens; most of the cantons have a single legislative chamber called the *great council*,

The great council.

elected on universal manhood suffrage for a term of three years (in some cantons four years). In several of the chief cantons (Geneva, Neuchâtel, Ticino, Zug, and Soleure) a scheme of proportional representation is in effect in the elections of members of the great council.

The duties of this great council are those of the ordinary legislative body: it considers and passes laws, fixes and apportions taxes, makes appropriations, appoints a number of officials, and has the general supervision of the administration.

The duties of the great council.

Together with this great council exists a small *executive council*, usually of five or seven members, variously called the *conseil d'état*, *Kleine Rath*, or *Regierungsrath*. The members of this council are chosen in the majority of cantons by the direct vote of the people. Eight cantons have a system by which the members are chosen by the great council. The work of this executive council is divided into separate departments, one member of the council being at the head of each department. Its duties are largely of an advisory and administrative nature: it administers the government, renders reports and proposes measures to the great council, and consults with the great council on matters affecting the government. The executive council has no power to veto the acts of the great council or to influence them except by its advice.

The executive council.

The areas of local government below the cantons are the *districts* and the *communes*.

Lower areas of local government.

The chief official of the district is elected by popular vote and represents the cantonal government in his area. He executes the laws of the canton and carries out the orders of the council. In some cantons he is assisted by an advisory council.

The district.

The commune is the ultimate unit of local government area and, as the name implies, resembles somewhat the French town. The chief issues and policies are commonly decided in full public assembly of qualified citizens.

The commune.

This assembly elects the chief officials and a single executive council of small size to conduct current affairs. In some communes, especially in French Switzerland, the type of the cantonal government is more closely followed and the commune has both an executive council and a larger communal council.

Democratic nature of Swiss local government.

It is worth while to consider the local government in Switzerland thus in detail, for the reason that, in all states to-day where questions of government are discussed at all, the government in Switzerland, both national and local, is cited as an example of the nearest approach to the ideal democracy in the world. The *Landsgemeinde* in the small cantons has been especially praised, but it may be noted that in all the cantons the system is so arranged that the government is never out of the control of the electorate. Add to the elements of government as we have outlined them in the preceding pages the initiative and referendum as they have developed both in the national government and throughout all the local areas, and an appreciation of the thoroughly popular character can be gained.

Germany: primary areas.

The federative principle is equally noticeable in a consideration of the primary areas for local government in the German Empire. Germany at present is composed of twenty-six units, comprising four kingdoms, six grand duchies, five duchies, seven principalities, three free towns, and an imperial territory (Alsace-Lorraine). In matters of local government each of these units (except Alsace-Lorraine) is free to create its own system.

Although from an enumeration of the different types of units which compose the German Empire it might be supposed that there would be a number of different types of local government, this is not the fact. Differences in minor points there are, but a general type of government for each of these units may be described.

All the German units, except Alsace-Lorraine and two grand duchies, have representative assemblies. In the four

kingdoms (Prussia, Saxony, Bavaria, and Württemberg) and in two of the largest of the grand duchies (Baden and Hesse) the assembly is divided into two chambers, of which the upper is composed of privileged members, as nobles or appointees of the monarch, and the lower of members elected by the people. The other seventeen German units have single-chambered legislatures, a large proportion of which in all cases is elected by the people, the remainder being composed of "privileged" members (*i.e.* nobles, members appointed by the ruler, or members elected under an unusually high property qualification). The qualifications for the electorate vary from full manhood suffrage to a high property qualification.

Typical local government features.

Before discussing the powers of these legislatures in detail, it is necessary to point out that many matters which in most countries would be considered of local interest and subject to the local government are in Germany regarded as of national concern and fall under the management of agents of the central government. Thus, in Germany, sanitary measures and administration, education, and police are affairs of the central government. Hence in all the units and areas of local government we find officials of the central government side by side with the officials of the local government, or (in some of the lower units) we find officials exercising two separate and distinct sets of functions, one set being those of representative of the central government, the other being those of executive officer for the local area.

Restrictions on power of legislative bodies in primary areas.

Furthermore, the powers of the legislatures are much curbed by the powers of the monarchs in the respective units. In some units the monarch is practically supreme, and the legislative body is merely advisory. In other units greater power is given to the legislative body, but nowhere does this body hold the supreme and unrestricted power over the government that, for example, the great council in a Swiss canton holds. The various units of the German confederation have noteworthy

elements of democracy, but they are far from being the examples of ideal democracy that the Swiss cantons are.

With the limitations mentioned, and the check upon their procedure held by the monarch of the unit, the legislatures do yet have a considerable share in their own government. As a general rule, they approve the budget, levy and apportion taxes, vote appropriations, have the power to initiate legislation, and have the right to interpellate ministers. Furthermore, as a means for the expression of the public opinion of the unit, they form an invaluable check to the unwarranted abuse of power by the monarch.

Functions of the legislative bodies in primary areas.

The ministers who form the cabinet in the various primary areas are, following the system in the national government, appointed by and responsible to the monarch in that area. This fact, however, does not interfere with the rights of the legislature to call the ministers before its body for "interpellation" (*i.e.* a questioning upon policy or action).

The cabinet.

The preponderating size and power of Prussia among the German units have naturally operated to influence the other units in their systems of local government. An outline of the main features of the Prussian system will, therefore, serve to give an idea of the system throughout nearly all Germany.

The influence of Prussia on local government.

The size of Prussia, and the fact that Prussia has in its history absorbed a number of areas formerly independent, has led to one grade of division of its territory for local administration which is not found in the other units. This division is a division of Prussia into provinces, these provinces usually corresponding in their boundaries to the boundaries of former territories absorbed. The government of the province is in the hands of a provincial legislative assembly, a provincial executive council of seven members, and a president (*oberpräsident*) appointed by and representing the central government of Prussia.

The provinces of Prussia.

Important areas of local government in Prussia below the province.

The important degrees of local government in Prussia below the province, which are similar to those subdivisions in other units of Germany, are (1) the administrative district (*Regierungsbezirke*), (2) the circle (*Kreise*), (3) the commune (*Gemeinde*).

Administrative district.

The administrative district is a division for the purpose of the administration of the central government's affairs over the various local areas. Its officials are a president and committee of advisers, all being appointed by the king of Prussia. These officials have a general supervision over the administration of the circles and communes in the area, have charge of state taxes, education, public lands, churches, and other general matters except the police. It has been the intention to keep the police strictly under local management.

The circle.

The circle, a division next below the administrative district, has as officials a *Landrath*, who is the chief executive, an assembly (*Kreistag*), and an *executive committee* composed of the *Landrath* and six members elected by the assembly. The *Landrath*, or chief executive, is appointed by the king, usually from among a number of persons recommended by the assembly (*Kreistag*). He is both the representative of the central government of Prussia and the chief executive of the local government. He is usually a professional governmental officer, trained in the duties of his position. The chief function of the executive committee is, as its name implies, to carry into effect the measures of the assembly (*Kreistag*).

The assembly of the circle, the *Kreistag*, is a very important element in the system. The members of the *Kreistag* are elected by a complicated form of indirect election so arranged that no class of the people within the circle (as landowners, city people, rural inhabitants) shall gain a decided preponderance in the assembly. The system is not democratic, in that it does not give each man a direct vote for his representative; it is rather intended to balance the various interests in the area so that none can oppress another. Interests, as land-

owning interests, or city interests, or rural interests, are represented in the *Kreistag*, rather than individuals. The members of the *Kreistag* are elected for six years, one half retiring every three years. The important powers of this assembly are appointive and financial in nature. It chooses, directly or indirectly, all the elective officers of the circle, and has the power to create local offices. In financial matters, it raises revenue for the expenses of its government by direct taxation. In addition to these important powers, it may make rules for administering local affairs, and may establish various charitable institutions for the good of the circle.

The communes.

The communes are the lowest areas of local government. The cities in Germany are not included under the commune form of government, so that this area is composed of small rural communities. The communes are restricted in size, the local government is simple in organization and weak in powers. In the smaller communes a mass meeting of the citizens regulates the common pasturage of the commune, makes provision for the care and maintenance of the highways, has a measure of control over schools and churches, and elects the mayor and his assistants. In the larger communes an elected representative assembly has similar powers. The method of voting, either for measures or for elections, is commonly by the three-class system, whereby the voters are divided according to wealth into three classes, each class having an equal voting weight. This system destroys the apparent democracy of the communal government.

City government in Germany.

City government in Germany is in a way distinct from any of the various subdivisions we have outlined above. The city council, elected by the three-class system just described, elects the executive officials and has the control of the city administration and business. The powers of this council are very broad. In many cases its powers have been used to establish municipal gas plants, electric supply plants, savings banks, etc. In addition to the city council is an executive board, consisting of a *burgomaster* and a small

number of citizens. The burgomaster, the only member of the board who receives a salary, is a person who has made a profession of city management. His influence in the community is great, he is appointed for not less than twelve years at a time, and his salary is large. The executive board has double functions, being the local organ of the central government on the one hand and the executive head of the city administration on the other. As an agent of the central government the executive board is under the supervision of the officials of the administrative district. As the executive head of the city administration the executive board puts into effect the measures of the city council.

From the foregoing outline it can be seen that local government in Germany is far from democratic. The three-class system of voting is undemocratic; the appointment of important officials in the government of each subdivision by the central government of the whole area is undemocratic; the system by which the executive head of each subdivision is not only charged with the executive duties of that subdivision but also represents the central government of the whole area is undemocratic. Local government in Germany is in the hands of the separate units which form the Empire, but within each of those units it is organized with strict supervision from the central government of the unit. Within each unit the system of local government resembles in little the system of local government in France. Less freedom of action is possible to the governments of the subordinate areas below the great primary areas in federative Germany than is actually exercised by the governments of local areas in unitary England.

Federative principle in local government in the United States.

In the United States the federative principle in local government lies at the very foundation of the government system. The United States is at present composed of forty-eight commonwealths; the constitution specifically outlines the organization and powers of the central government and names a few things which the States may not do, and then in the tenth amend-

ment declares: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

As the United States has its constitution outlining its framework of government, so each commonwealth in the United States likewise has a constitution outlining the framework of government. As a matter of fact, the history of the constitutions in the older commonwealths antedates that of the constitution of the United States.

Each commonwealth has its own constitution.

Although the constitutions of the different commonwealths differ radically in details, such as length, amount of detail, etc., the main principles on which the governments in the various commonwealths are organized are the same. Each commonwealth has a governor who serves as the executive head, a legislature of two chambers, and a judiciary of various grades. The resemblance between the organization of the governments of the several commonwealths and the central government is at once manifest, but the resemblance is not due to the copying of the central government by the commonwealths so much as to the fact that originally the central government organization was evolved from the experience of the original commonwealths.

Typical commonwealth organization.

The legislatures of all the commonwealths are divided into two houses or chambers, known as the *senate* and the *house of representatives* (or in six commonwealths the "Assembly" and in three the "House of Delegates"). The members of both houses are chosen by direct vote of the electorate. The senators are fewer in number than the representatives, are chosen from larger districts, in two thirds of the states have a longer tenure of office, and only a certain number (usually one half) are renewed at each election. Both senators and representatives must be resident in the districts from which they are elected; both senators and representatives are paid by the commonwealth, in many cases such pay being computed according to the number of days of

Commonwealth legislatures.

the legislative session. In most of the commonwealths the constitution provides for biennial sessions of the legislature; New York, Massachusetts, Rhode Island, New Jersey, South Carolina, and Georgia, however, have annual sessions, and Alabama and Mississippi quadrennial sessions. Extraordinary sessions may be summoned by the governor of the State.

In general, the powers of the legislature of the commonwealth include everything not distinctly prohibited by the constitution of the United States or the constitution of the commonwealth. The distrust of the people in their legislators has led many commonwealths in their constitutions to prohibit or restrict legislative action in certain matters; thus in most commonwealths a limit is placed upon the public indebtedness which may be incurred, and certain restrictions are put on the power to lay taxes and make appropriations. Among important powers which the legislatures commonly exercise are the following: the power to regulate by law the ownership and disposition of property; the power to draw up a criminal code for the commonwealth and to provide for the system of courts; the power to regulate education, the conduct of elections, the granting of franchises; the power to make provisions for the subordinate areas of local government, as counties, townships, cities, etc.; the power to pass general statutes for the public good, as in matters affecting public sanitation and health, public charitable institutions, and the like; and the power to regulate businesses, corporations, and the membership in certain professions, as of medicine, or of law, by requiring registration, certificate of incorporation, examination, or the like. The variety and complexity of matters in which the legislature has power to act render it impossible to include even in general classes all the subjects.

Powers of the legislatures.

The organization and procedure in the two legislative chambers are in the hands of the chambers themselves. In the senate the lieutenant governor of the commonwealth is usually the presiding officer; in the house a speaker is elected by the members. Each

Organization and procedure.

chamber has a clerk to record proceedings, call the roll, and keep the calendar of the bills under consideration. The members of each chamber are, for convenience in handling the large number of bills presented, divided into a number of committees, after the manner of the houses of the national legislature, as the committee on appropriations, on ways and means, on banks, etc.

Bills may be initiated in either chamber, but in most commonwealths the money bills must originate in the house. The procedure in the consideration of bills is similar to that in the national legislature: each bill, at its introduction and first reading, is referred to a committee; when reported out of the committee, it is read (usually by title only) a second and third time, debated, voted upon, and, if passed, duly enrolled and presented to the governor for his signature. The procedure in each chamber is practically the same.

The commonwealth executive.

The *governor* of a commonwealth is chosen directly by the same electorate that chooses the members of the legislature. In Massachusetts and Rhode Island his term of office is one year; in New Jersey it is three years; in twenty-three of the remaining States it is four years, and in the rest it is two years. He is a paid official, but the salary in most States seems incommensurate with the dignity and importance of his position.

His functions.

The governor is the official representative and executive head of the commonwealth. He is charged with carrying into effect the laws passed by the legislature. In case of emergency he has the power to call the legislature in special session, the legislature under such circumstances being prohibited from considering any measures other than those for which it was summoned. In his message to the legislature, commonly required by the commonwealth constitution, he can outline the measures he recommends for the public good, the force of his recommendation depending, of course, as well upon his personal influence with the legislators as upon the wisdom of the measures proposed. He has the power to veto

any measure passed by the legislature, provision being made that such veto can be overridden by the legislature by an extraordinary majority in both houses. He has the right of appointment and of removal of a number of commonwealth officials, as members of various boards and commissions, but his power of appointment is naturally not comparable with that of the President. He is at the head of the military forces of the State and may call out the militia to preserve public order. He has in many commonwealths the power to pardon offenders against the laws of the commonwealth.

Commonwealth government and central government; a difference.

An important difference between the commonwealth government and the central government is to be noted in the relations between the executive head and the heads of various executive departments. In the central government, as has been explained, the heads of the various executive departments, as the secretary of war, the secretary of state, etc., are chosen by and are responsible to the President. In the commonwealth government the corresponding officials are elected by the people and have no responsibility to the governor. These officials are rather colleagues than subordinates. The governor is usually without power to control or direct the executive heads of the various departments; these officials acknowledge responsibility only to the electorate by whom they were elected.

Lieutenant governor.

In most States a *lieutenant governor* is elected at the same time as the governor. His office corresponds to that of Vice President in the central government; *i.e.* he presides over the sessions of the senate and succeeds the governor in case the latter's office is vacated.

Commonwealth judiciary.

Each commonwealth has a judiciary and a judicial system of its own. Inasmuch as the jurisdiction of the federal courts is strictly limited under the constitution of the United States, most cases at law are brought in the courts of the commonwealth.

In each commonwealth the judicial system presents a regular

series of graded courts from lowest to highest. At the foot of the series are the courts of the justices of the peace, in which are brought cases involving small amounts (commonly less than $1.50) or petty offenses. In the cities the courts of the corresponding grade are commonly divided into two kinds: (1) the police courts for the trial of petty offenses, and (2) the municipal civil courts for cases involving small amounts.

Hierarchy of courts: courts of justice of the peace.

The county courts (in some commonwealths called district courts or courts of common pleas), so called because their jurisdiction includes the territorial area known as the county, are the courts of the next higher grade. This grade of courts has original jurisdiction in more grave criminal offenses and in civil cases involving considerable amounts, and may hear appeals from the courts of the justice of the peace.

County courts.

In many commonwealths the next higher grade of courts is the superior or circuit court, whose jurisdiction often includes a number of counties. The judges of these courts usually travel (hence the name "circuit") from county to county in their area, holding court in each county. The courts have wide original jurisdiction in both civil and criminal cases.

Circuit courts.

In all commonwealths there is a highest court, known variously as the supreme court, court of appeals, or court of errors and appeals. Its jurisdiction includes the whole commonwealth, and its most important function consists in hearing and deciding appeals from the lower courts and in passing upon the constitutionality of the laws. Its decisions are final except where the nature of the case allows an appeal to the federal Supreme Court.

Supreme court.

In addition to this graduated series of courts are commonly a number of special courts for special purposes, as probate (or surrogates') courts for settling the estates of persons deceased, children's courts for dealing with children's offenses, courts of claims for settling claims against the commonwealth, etc.

Special courts.

The prosecuting attorney (also known as district attorney, state's attorney, attorney for the commonwealth, and county attorney) is an important feature in the judicial system. He represents the commonwealth and conducts the prosecution in criminal cases. He resembles after a fashion the complainant in civil cases, but his effort should be to reveal the truth rather than to win his case at any cost. **Prosecuting attorney.**

In most commonwealths the judges of the various courts are elected by the people, the choice thus being on a different status from the judges in the federal courts. The arguments urged against this method of choosing the judges were previously cited in the discussion of the choice of the federal judges. It is doubtful whether the people at large are fitted to estimate the technical qualifications of a candidate for a judgeship; it is certain that it is unfortunate to force candidates for judgeships to enter the partisan struggle of party politics for election to such a position; dependence upon party nomination and popular election may influence a judge to render his decisions according to party and popular demands rather than according to strictest justice. Opponents urge that judges should be appointed by the chief executive of the commonwealth or by the legislature. Choice by the legislature, however, too often leads to political bargains for these important positions, and choice by the governor, it is said, renders the judges too arbitrary and independent of the popular will. **Choice of judges.**

Closely connected with the choice of judges is their tenure of office and their salary. In treating the federal judiciary it was pointed out that, in order to insure an impartial and incorruptible judiciary, the tenure of office should be secure for judges during good behavior, and the salaries ample. It can hardly be said that the commonwealths have complied with these requirements. The judges are elected for definite terms, comparatively short for judges of the lower grade of courts and comparatively long for judges of the higher courts. In only three commonwealths, Massa- **Tenure of office and salaries.**

chusetts, New Hampshire, and Rhode Island, do the judges of the highest court serve for life or during good behavior. In many commonwealths these judges of the highest court are chosen for six years, in some for nine, in a few for twelve, in New York for fourteen, in Maryland for fifteen, in Pennsylvania for twenty-one. The salaries, too, compared with what an able lawyer can earn, are meager. In Vermont the judges of the highest court receive but $2500 a year, and less than twelve States pay the judges of the higher courts over $5000 a year.

Subordinate areas within the commonwealths.

With the above outline of the structure of government in the primary areas of the United States in mind, we pass to a consideration of the subordinate areas within the commonwealths.

Two areas for local government are found within the commonwealth; namely, the *county* and the *town*. The commonwealths are divided into counties and the counties are divided into towns (or townships or districts).

The relations between these subordinate areas and the commonwealth are very different from the relations between the commonwealth and the federal state. These counties and towns are wholly controlled by the legislature of the commonwealth; the legislature can by law create or abolish offices, has the right to dictate absolutely how the government in these areas shall be carried on. However, each of these areas — the county and the town — is in itself a unit of local government, has officials elected by its citizens, and is actually seldom hindered by legislative interference. Thus we have practical self-government for the area, although theoretically the commonwealth has wide and absolute powers.

Relations between subordinate areas and commonwealths.

The counties, of which there are 2852 in the United States, differ widely in area and population, the county of Bristol in Rhode Island containing 25 square miles as compared with Custer County in Montana with 20,000, and some counties in Texas with less than 400 inhabitants as compared with New York County with 2,800,000.

County government.

The county is a division made by the commonwealth (1) for the administration of commonwealth government and (2) for purposes of local government. The chief officials of the typical county government, who are commonly officials elected by the people for short terms, consist (1) of a county board, having charge of finance and administration, levying taxes and appropriating funds, maintaining highways and county buildings, and controlling elections of the county; (2) of a county judge, who holds the county courts; (3) of a sheriff, who serves as representative of the police power in the area, acting as guardian of life and property, policeman, jailer, and agent to carry out the orders of the court; (4) of a coroner, whose duty it is to view the bodies of persons who die as a result of accident or crime; (5) of a treasurer, who collects the taxes, remits to the commonwealth authorities their portion, and takes care of the county funds; (6) and of a county superintendent of education in the majority of commonwealths, a county clerk in charge of the county records in many commonwealths, and a county assessor in most of the southern commonwealths, who makes and keeps the property assessments of the county.

The subdivision of the county is the town (or township or district). The position and functions of the town as a unit of local government are uniformly much more important in the northern and eastern commonwealths than in the southern tier of commonwealths. The town was evolved as a unit of self-government in New England before the county, and the New England pioneers spread the town system with their progress through the northern States. In the South, on the other hand, the county was the first unit of government, and the later division of the county into towns or townships (usually in this section known as districts or precincts) did not give much vitality to the smaller units.

Town government.

The town or township is in the New England States the most vital unit of local government. Its government is vested in the town meeting, an annual assembly of all the electors in the town, at which officials of the town are elected and general

policies discussed. The executive officers of the town are the selectmen, a small board elected at the town meeting, who have the power to put in effect the decisions of the town meeting, to appropriate town funds, to fix assessments, and to control the manner and details of elections. The town treasurer cares for the funds of the town, the town constable guards the lives and property and keeps the peace, the justice of the peace has his court, and the town clerk keeps the town record — all these officers being elected by the people in most New England towns.

New England town government.

The intense interest in local affairs which has kept the vitality in the New England town organization did not survive the transplanting process, so that the town system in the northern tier of States outside of New England is somewhat different. In a number of important States (Pennsylvania, Ohio, Indiana, Iowa, Kansas, and Missouri) the town meeting has disappeared, all its functions being exercised by elected officials; in another group of States (New York, New Jersey, Michigan, Illinois, Missouri, Minnesota, Nebraska, North Dakota, and South Dakota) the town meeting has survived, but its functions are much restricted.

Northern town government.

In the southern States the town areas, commonly known as districts, are often merely election units for justices of the peace, constables, and for school supervision and administration.

Southern town government.

The above areas of local government do not include cities; the problems presented by the dense population in cities have required more complex governmental organization. Cities, therefore, have commonly applied to the commonwealth legislatures for special charters of incorporation conferring wider privileges and the right to establish a special form of government. Notice that in the case of cities, as in the case of counties and towns, the units are theoretically and legally under the absolute and complete control of the commonwealth government; the powers which the city exercises are granted by the commonwealth legislature

City government presents different problems.

and may be changed, annulled, or increased at the latter's will.

It is a common practice at present for commonwealth legislatures to pass one general law for city government throughout the commonwealth, thus allowing any community which fulfills the provisions of the general law to obtain its charter, and thus insuring precisely the same organization and powers to all the cities within the area. In some commonwealths, however (notably Missouri, Minnesota, Michigan, Oklahoma, Colorado, Washington, Oregon, and California), a greater liberty is allowed the cities in forming their organization by clauses in the commonwealth constitutions, whereby the electors of each large city may prepare their own charter, provided such charter is consistent with the laws of the commonwealth. The charter of incorporation commonly has (1) the name of the place, (2) its boundaries, (3) an outline of its organization, and (4) a detailed statement of its powers.

The charter of incorporation.

From the diversity of city charters results great diversity in city government, yet certain typical characteristics of such government in the United States may be presented.

Typical city government.

Cities in general reproduce in their governmental system the prominent features of the commonwealth system and of the state system. Cities have a legislative body (the city *council*), an executive head (the *mayor*), and a group of administrative officers upon whose efficiency the success of the city government largely depends.

The city council is in most cities to-day composed of a single chamber, but some important places (notably Baltimore, Buffalo, Louisville, Philadelphia, and St. Louis) still cling to the bicameral organization. In unicameral councils the members are popularly elected by districts or wards, usually one from each ward; in bicameral councils the members of the lower chamber usually are elected by wards, and members of the upper chamber from the city at large. The term of office is commonly two years.

The council.

The powers of the city council are specifically set forth in the charter of incorporation. In general, the council has power to enact by ordinary legislative procedure ordinances regulating such matters of local importance as the public streets, sanitation, protection against fire, suppression of vice, sale of liquor, granting of franchises for street railways, gas and water pipes, electric lights, and the like, control of markets and amusement resorts, and peace and order throughout the city.

Powers of council.

The mayor, who is the executive head of the city government, is an official elected by the people at large. His term of office varies: in many New England cities it is one year; in New York, Chicago, and Boston it is four years; in most cities of the country it is two years. He has the power of appointment to a number of local offices; he is charged with enforcing the ordinances of the city council; he has the power of veto over the city council, provision being usual that such a veto may be overridden only by an extraordinary majority in the council; he submits annual and special messages to the council regarding the condition of the city, and suggests ordinances; he is *ex officio* member of many of the important boards.

The mayor.

The administrative work of the typical city is divided among a number of departments, as the law department, the fire department, the water department, the finance department, the police department, the street department, the health department, and the like. Two systems of managing these departments exist in common use in cities to-day: the first is the system of boards, by which a fire board, a street board, a water board, etc., consisting of members appointed by the mayor, administer the affairs which come respectively within their province; the second is the system of commissioners, by which single commissioners, usually appointed by the mayor, manage the respective departments. The latter system is more favorably regarded at present for the reason that responsibility is thus concentrated and quick action in emergencies is assured.

The city departments.

Severe criticism has been directed against city governments in recent years. The power to grant franchises often worth millions of dollars to corporations has in some instances proved a source of corruption in the council; the rapid and enormous increase of population in many cities made huge undertakings indispensable for public health and welfare, necessitating large municipal debts, in incurring which the council in some cases was unwise or corrupt, or both; the numerous paid officials in the employ of the city made the control of the city government an object to the lowest species of politicians, with the result that the members of the city government deteriorated in quality with successive elections; and in cases of grave public emergency the government failed in case after case to act resolutely and efficiently for the public interest. These evils were not confined to one city, but were general throughout the cities in the various commonwealths.

Evils in city government.

The realization of these evils induced various attempts at reform. One method was to limit the powers of the city council by the city charter. Thus the city council has been restricted in its power to impose taxes or to incur debts for the city; thus, again, the city council no longer exercises the wide powers it once had in granting franchises; thus, further, the council has little power of appointment or removal of city officials or of superintendence of city administration. The powers taken from the council have in many cases been vested in separate boards appointed by the mayor, as, in New York, the board of estimate and apportionment.

Reform: 1. Limitation of powers.

The most conspicuous of the several schemes for municipal reform is what is known as the *commission form of government*. This form was first adopted in Galveston, Texas, after the storm and flood of 1900 created an emergency before which the city government became utterly paralyzed.

2. Commission government.

The chief features of the Galveston plan are as follows: (*a*)

the entire legislative and executive powers of the city are vested in a commission of five men, a mayor and four commissioners, elected by the city at large; (*b*) the administrative work of the city is divided among four departments: (1) police and fire, (2) streets and public property, (3) water works and sewers, (4) finance; (*c*) one commissioner has the headship of each department, leaving the mayor as a member of the commission without a special department but with general supervision over all departments. The commission is expected to administer the business of a city in the same way that managing directors manage the business of a corporation.

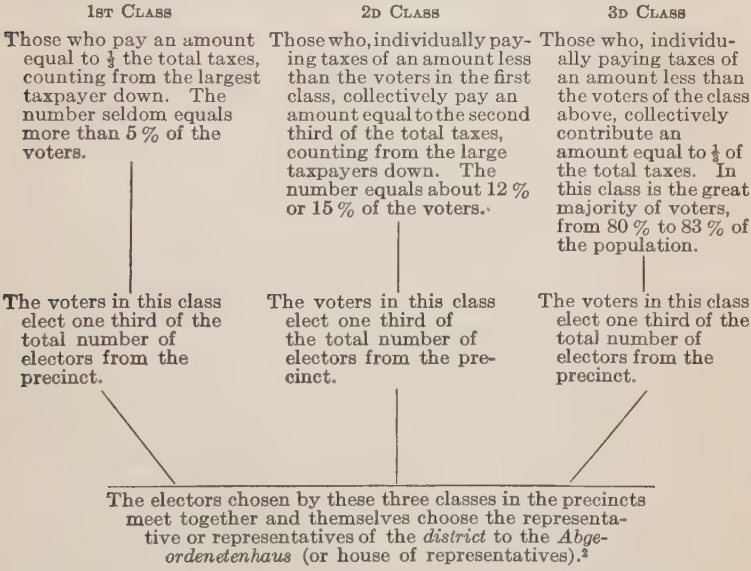
The sensational circumstances under which this government was established and the degree of success it achieved led many cities to seek charters embodying similar principles of organization. The city of Des Moines, Iowa, instituted a refinement of the Galveston plan by adding articles providing for the initiative, referendum, and recall. The city of Dayton, Ohio, adopted the commission plan of Galveston, but vested the executive powers in a "city manager" to be chosen by the commission and to be intrusted with all the executive business of the municipality. At the present time approximately three hundred cities in the United States in widely separated sections have instituted a commission form of government, and a large number of commonwealths have passed laws permitting any city within its area to organize its government in this way.

Under the commission plan enormous power is concentrated in the hands of a few persons, and no separation between the legislative functions and the executive functions is made; but even thus the plan has decided advantages. The small number of men concerned with governing the city assures comparatively rapid and effective action in the complex problems which continually arise; responsibility can always be definitely placed in case of failure; and the most able men in the community can confidently be relied upon to serve upon the commission if desired.

1

Three-class System of Indirect Elections in Prussia

Prussia is divided into electoral districts, from each of which a certain number (ranging from 1 to 3) of representatives to the *Abgeordenetenhaus* are chosen. These representatives are elected by electors who are in turn elected by the voters in smaller electoral precincts (known as *Urwahlbezirke*, or original electoral precincts). Each electoral precinct is entitled to one elector to each 250 souls in the precinct.[1] For the purpose of choosing these electors from the precincts, the voters in the precinct are divided into the following classes:


1st Class
Those who pay an amount equal to ⅓ the total taxes, counting from the largest taxpayer down. The number seldom equals more than 5 % of the voters.
2d Class
Those who, individually paying taxes of an amount less than the voters in the first class, collectively pay an amount equal to the second third of the total taxes, counting from the large taxpayers down. The number equals about 12 % or 15 % of the voters.
3d Class
Those who, individually paying taxes of an amount less than the voters of the class above, collectively contribute an amount equal to ⅓ of the total taxes. In this class is the great majority of voters, from 80 % to 83 % of the population.
The voters in this class elect one third of the total number of electors from the precinct.
The voters in this class elect one third of the total number of electors from the precinct.
The voters in this class elect one third of the total number of electors from the precinct.
The electors chosen by these three classes in the precincts meet together and themselves choose the representative or representatives of the district to the Abgeordenetenhaus (or house of representatives).[2]

[1] Where the number of inhabitants is not a multiple of three, an extra elector is allotted to the district, or two extra electors, to make up the proper proportion. If one extra elector is allotted, he is chosen by the 2d class of voters; if two extra electors are allotted, they are chosen by the 1st and 3d classes of voters respectively. For example, if a precinct (*Urwahlbezirke*) contained 1000 souls, it would be entitled to 4 electors, one chosen by each of the 3 classes of voters, and one extra chosen by the 2d class of voters; if a district had 2000 souls, it would be entitled to 8 electors, two chosen by each of the three classes, and one additional by class 1 and one by class 3.

[2] As in all cases where electors have no function except to elect, the electors in Prussian precincts are chosen in the name of the candidate whom they are pledged to support for a seat in the Abgeordenetenhaus.

2

Commission Form of Government for Cities

Law (The Des Moines Act) passed by the Iowa legislature, March 29, 1907, "to provide for the government of certain cities."

Cities Affected by the Act

Section 1. That any city of the first or second class, or with special charter, now or hereafter having a population of seven [1] thousand or over, as shown by the last preceding state census, may become organized as a city under the provisions of this act by proceeding as hereinafter provided.

Provision for the Submission of the Question of Commission Government to the Electors

Sec. 2. Upon petition of electors equal in number to twenty-five per centum of the votes cast for all candidates for mayor at the last preceding city election of any such city, the mayor shall, by proclamation, submit the question of organizing as a city under this act at a special election to be held at a time specified therein, and within two months after said petition is filed; provided, however, that in case any city is located in two or more townships said petition shall be signed by twenty-five per centum of the qualified electors of said city residing in each of said townships. . . . If the majority of the votes cast shall be in favor thereof, cities having a population of twenty-five thousand and over shall thereupon proceed to the election of a mayor and four councilmen, and cities having a population of seven thousand, and less than twenty-five thousand, shall proceed to the election of a mayor and two councilmen, as hereinafter provided. Immediately after such proposition is adopted, the mayor shall transmit to the governor, to the secretary of state, and to the county auditor, each a certificate stating that such proposition was adopted. At the next regular city election after the adoption of such proposition there shall be elected a mayor and councilmen. In the event, however, that the next regular city election does not occur within one year after such special election the mayor shall, within

[1] Originally this figure was 25,000. It was amended March 30, 1909.

ten days after such special election, by proclamation call a special election for the election of a mayor and councilmen, sixty days' notice thereof being given in such call; such election in either case to be conducted as hereinafter provided.[1]

SEC. 3. [Provides for applying the law and existing ordinances to commission-governed cities.]

Elective Offices. Terms of Office and Vacancies

SEC. 4. In every city having a population of twenty-five thousand and over there shall be elected at the regular biennial municipal election a mayor and four councilmen, and in every city having a population of seven thousand and less than twenty-five thousand, there shall be elected at such election a mayor and two councilmen.[1]

If any vacancy occurs in any such office the remaining members of said council shall appoint a person to fill such vacancy during the balance of the unexpired term.

Said officers shall be nominated and elected at large. Said officers shall qualify and their terms of office shall begin on the first Monday after their election. The terms of office of the mayor and councilmen or aldermen in such city in office at the beginning of the terms of office of the mayor and councilmen first elected under the provisions of this act shall then cease and determine, and the terms of office of all other appointive officers in force in such city, except as hereinafter provided, shall cease and determine as soon as the council shall by resolution declare.

Nomination and Election of Candidates

SEC. 5. Candidates to be voted for at all general municipal elections at which a mayor and councilmen are to be elected under the provisions of this act shall be nominated by a primary election, and no other names shall be placed upon the general ballot except those selected in the manner hereinafter prescribed. The primary election for such nomination shall be held on the second Monday preceding the general municipal election. . . .

Constitution of the Council

SEC. 6. Every city having a population of twenty-five thousand and over shall be governed by a council consisting of the

[1] As amended by the Act of March 30, 1909.

mayor and four councilmen, and every city having a population of seven thousand and less than twenty-five thousand shall be governed by a council consisting of the mayor and two councilmen, chosen as provided in this act, each of whom shall have the right to vote on all questions coming before the council. In cities having four councilmen three members of the council shall constitute a quorum, and in cities having two councilmen, two members of the council shall constitute a quorum, and in cities having four councilmen the affirmative vote of three members, and in cities having two councilmen the affirmative vote of two members shall be necessary to adopt any motion, resolution or ordinance, or pass any measure unless a greater number is provided for in this act.[1]

Powers and Duties of the Council

SEC. 7. The council shall have and possess, and the council and its members shall exercise all executive, legislative and judicial powers and duties now had, possessed and exercised by the mayor, city council, solicitor, assessor, treasurer, auditor, city engineer and other executive and administrative officers in cities of the first and second class, and in cities under special charter, and shall also possess and exercise all executive, legislative and judicial powers and duties now had and exercised by the board of public works, park commissioners, the board of police and fire commissioners, board of water works trustees, and board of library trustees in all cities wherein a board of public works, park commissioners, board of police and fire commissioners, board of water works trustees, and board of library trustees now exist or may be hereafter created.[1]

The executive and administrative powers, authority and duties in such cities shall be distributed into and among five departments, as follows:

1. DEPARTMENT OF PUBLIC AFFAIRS.
2. DEPARTMENT OF ACCOUNTS AND FINANCE.
3. DEPARTMENT OF PUBLIC SAFETY.
4. DEPARTMENT OF STREETS AND PUBLIC IMPROVEMENTS.
5. DEPARTMENT OF PARKS AND PUBLIC PROPERTY.

The council shall determine the powers and duties to be performed by, and assign them to the appropriate departments;

[1] As amended by the Act of March 30, 1909.

shall prescribe the powers and duties of officers and employees; may assign particular officers and employees to one or more of the departments; may require an officer or employee to perform duties in two or more departments; and may make such other rules and regulations as may be necessary or proper for the efficient and economical conduct of the business of the city.

Organization of Departments

SEC. 8. The mayor shall be superintendent of the department of public affairs, and the council shall at the first regular meeting after election of its members designate by majority vote one councilman to be superintendent of the department of accounts and finances; one to be superintendent of the department of public safety; one to be superintendent of the department of street and public improvements; and one to be superintendent of the department of parks and public property; provided, however, that in cities having a population of less than twenty-five thousand there shall be designated to each councilman two of said departments. Such designation shall be changed whenever it appears that the public service would be benefited thereby. The council shall, at said first meeting, or as soon as practicable thereafter, elect by majority vote the following officers: A city clerk, solicitor, assessor, treasurer, auditor, civil engineer, city physician, marshal, chief of fire department, market master, street commissioner, three library trustees, and such other officers and assistants as shall be provided for by ordinance and necessary to the proper and efficient conduct of the affairs of the city; provided, however, that in cities having a population of less than twenty-five thousand such only of the above-named officers shall be appointed as may, in the judgment of the mayor and councilmen, be necessary for the proper and efficient transaction of the affairs of the city. In those cities of the first class not having a superior court, the council shall appoint a police judge. In cities of the second class not having a superior court the mayor shall hold police court, as now provided by law. Any officer or assistant elected or appointed by the council may be removed from office at any time by vote of a majority of the members of the council, except as otherwise provided for in this act.[1]

[1] As amended by the Act of March 30, 1909.

Creation and Abolition of Offices

SEC. 9. The council shall have power from time to time to create, fill and discontinue offices and employments other than herein prescribed, according to their judgment of the needs of the city; and may by majority vote of all the members remove any such officer or employee, except as otherwise provided for in this act; and may by resolution or otherwise prescribe, limit or change the compensation of such officers or employees.

SEC. 10. [Provides for Salaries.]

SEC. 11. [Provides for Meetings of the Council.]

Ordinances, Resolutions and Franchises

SEC. 12. Every ordinance or resolution appropriating money or ordering any street improvement or sewer, or making or authorizing the making of any contract, or granting any franchise or right to occupy or use the streets, highways, bridges or public places in the city for any purpose, shall be complete in the form in which it is finally passed, and remain on file with the city clerk for public inspection at least one week before the final passage or adoption thereof. No franchise or right to occupy or use the streets, highways, bridges or public places in any city shall be granted, renewed or extended, except by ordinance, and every franchise or grant for interurban or street railways, gas or water works, electric light or power plants, heating plants, telegraph or telephone systems, or other public service utilities within said city, must be authorized or approved by a majority of the electors voting thereon at a general or special election, as provided in section 776 of the Code.

SEC. 13. [Provides for Restrictions on Officers and Employees.]

SEC. 14. [Provides for a Civil Service System.]

Monthly Itemized Statements

SEC. 15. The council shall each month print in pamphlet form a detailed itemized statement of all receipts and expenses of the city and a summary of its proceedings during the preceding month, and furnish printed copies thereof to the state library, the city library, the daily newspapers of the city, and to persons who shall apply therefor at the office of the city

clerk. At the end of each year the council shall cause a full and complete examination of all the books and accounts of the city to be made by competent accountants, and shall publish the result of such examination in the manner above provided for publication of statements of monthly expenditures.

Appropriations

SEC. 16. If, at the beginning of the term of office of the first council elected in such city under the provisions of this act, the appropriations for the expenditures of the city government for the current fiscal year have been made, said council shall have power, by ordinance, to revise, to repeal or change said appropriations and to make additional appropriations.

SEC. 18. [Provides for the Recall.]

SEC. 19. [Provides for the Initiative and Referendum.]

SEC. 20. [Provides for the "going into effect of Ordinances."]

Procedure for the Abandonment of the Commission Form

SEC. 21. Any city which shall have operated for more than six years under the provisions of this act may abandon such organization hereunder, and accept the provisions of the general law of the state then applicable to cities of its population, or if now organized under special charter, may resume said special charter, by proceeding as follows:

Upon the petition of not less than twenty-five per centum of the electors of such city a special election shall be called, at which the following proposition only shall be submitted: "Shall the city of (name the city) abandon its organization under chapter —— of the acts of the Thirty-second General Assembly and become a city under the general law governing cities of like population, or if now organized under special charter shall resume said special charter?

If a majority of the votes cast at such special election be in favor of such proposition, the officers elected at the next succeeding biennial election shall be those then prescribed by the general law of the state for cities of like population, and upon the qualification of such officers such city shall become a city under such general law of state; but such change shall not in any manner or degree affect the property, right or liabilities of any nature of such city, but shall merely extend to such change in its form of government.

The sufficiency of such petition shall be determined, the election ordered and conducted, and the results declared, generally as provided by section 18 of this act, in so far as the provisions thereof are applicable.

Requirements about Petitions

SEC. 22. Petitions provided for in this act shall be signed by none but legal voters of the city. Each petition shall contain, in addition to the names of the petitioners, the street and house number in which the petitioner resides, his age and length of residence in the city. It shall also be accompanied by the affidavit of one or more legal voters of the city stating that the signers thereof were, at the time of signing, legal voters of said city, and the number of signers at the time the affidavit was made.

Act in Effect

SEC. 23. This act, being deemed of immediate importance, shall take effect and be in force from and after its publication in The Register and Leader and Des Moines Capital, newspapers published in Des Moines, Iowa.[1]

(Cited, with omissions, from Woodruff, "City Government by Commission.")

3

CITY MANAGER PLAN FOR EFFICIENCY IN CITY GOVERNMENT

Ordinance of the City of Staunton, Virginia, creating the office.

"Be it ordained by the Council of the City of Staunton, Virginia:

"1. That there be appointed by the two branches of the council in joint session as soon as possible after the adoption of this resolution and thereafter annually at the regular election of city officers, in July of each year, an officer to be known and designated as 'general manager.'

"2. The general manager (except in case of the first appointment under this resolution, which shall be until the next regular election of city officers, in July, 1908) shall hold office for the

[1] Approved March 29, 1907; amended by Act of March 30, 1909, as indicated.

term of one year and until his successor is duly elected and qualified, unless sooner removed by the council at its pleasure.

"3. The general manager shall be paid an annual salary of . . . dollars, and he shall have the right to employ one clerk at a salary of . . . dollars per annum, to be paid by the city, the amount to be hereafter fixed by the council.

"4. The general manager shall devote his entire time to the duties of his office, and shall have entire charge and control of all the executive work of the city in its various departments, and have entire charge and control of the heads of departments and employees of the city. He shall make all contracts for labor and supplies, and in general perform all of the administrative executive work now performed by the several standing committees of the council except the finance, ordinance and auditing committees. The general manager shall discharge such other duties as may from time to time be required of him by the council.

"5. The general manager before entering upon the duties of his office shall execute a bond before the clerk of the council in the penalty of $5000 with good and sufficient surety, conditioned for the faithful performance of the duties of his office."

(Woodruff, "City Government by Commission.")

CHAPTER X

GOVERNMENT OF DEPENDENCIES

A DEPENDENCY is any country, province, or territory subject to the sovereignty of a state but not forming *territorially* a constituent part of that state. Thus India is a dependency of England, German East Africa is a dependency of Germany, the Philippine Islands are a dependency of the United States. These territories may be considered an integral part of the sovereign states to which they owe allegiance; yet the fact of actual separation by intervening land or water has invariably operated to make their form of government different from the government as exercised within the strict territorial confines of the state. Such separated territories have been treated as dependent upon the will of the sovereign state; their people have not possessed the rights of citizens of the home state in the central government of that state, except where such rights have been expressly accorded them; their governments have been subject to the will of the central government of the state.

Definition and nature of a dependency.

I. Types of Dependencies

The extension of the sovereign power of great states over detached territories has sprung from a variety of causes and has resulted in radically different types of dependencies.

Various types of dependencies.

In some cases these detached and perhaps distant territories have been populated by citizens of the parent state, who for one reason or another have left that state to establish their fortunes in a new land. Such citizens in the new land are willing to acknowledge the sovereignty of the state

Colonial dependencies.

from which they have emigrated; and such a state on its part is glad to accept as its possession the land which its citizens have settled. Dependencies of this character are more properly called *colonies*, from the Latin word *colonia*, meaning a planting place or a group who plant or settle.

Examples of colonial dependencies are numerous. The Puritans who fled from England to escape religious persecution in the seventeenth century and established themselves in the new world developed into one of the American colonies. The Englishmen who, employed by a great English trading company, emigrated to the new world and established the beginnings of Virginia did in actual fact start a colony. The convicts who were transported by judicial sentence to the wilds of Australia formed there the beginnings of an English colony. The French men and women who were bribed or forced to go to North America settled the French colony in what is now Canada. Various reasons caused the emigration from the parent country and the settlement in the new, but the vital character of the colony is due to the fact that in all instances the settlers did establish themselves permanently in their new surroundings, and that a recognized bond of allegiance to the country from which they came was maintained.

Direct dependencies.

In contrast to these colonial dependencies are detached territories of savage or semi-savage races which by one means or another have been brought into subjection to a great power. Thus in many cases states have by force of arms brought a country into subjection, as England conquered large sections of India. Again, states have inveigled half-civilized chieftains into signing away their independence, as agents of Germany and agents of England did for their respective states throughout parts of Africa. Again, a state may be the first to assert a legal claim to a relatively vacant and idle territory, as France did to a large portion of the Desert of Sahara. A characteristic feature of all dependencies of this class is that they are mainly inhabited by a people foreign in blood and in habits from the people of the sovereign state.

Two transitory stages which in some cases have marked the progress of these direct dependencies from their primitive freedom to their position of direct dependence may be noted. These stages are called, respectively, *spheres of influence* and *protectorates*.

Transitory stages toward direct dependence.

The sphere of influence is a relatively new development in history, being the result of the disgraceful land-grabbing ambitions which led the great powers of Europe during the nineteenth century to preëmpt much more territory than they could at the moment absorb. England, France, and Belgium, especially, pushing ahead to lay claim to great sections of barbarous Africa on slight grounds of discovery and prior assertion of right, soon realized that the forcible assumption of such territories was certain to result in serious misunderstandings and war. By international conferences of the land-grabbing powers, therefore, it was agreed that any single power might, by giving due notice to the other land-grabbing powers (dignifiedly called "colonial powers"), and by a reasonable definition of claims and boundaries, preëmpt territory not belonging to another civilized power. Disputed claims at the time were adjusted by agreement and solemn treaty, and the agreeing nations extended their claims by all conceivable methods. Such preemption, thus guaranteed by agreements among the land-grabbing powers, simply means that no great power other than the one claiming such preëmption shall exercise or attempt to exercise any measure of political control over the territory in question. The territory need not be actually occupied by the great state which claims it, need not be actually governed by the said great state, but by international agreement no other great state may assert or exercise control therein. "A sphere of influence may be defined as a tract of territory within which a state, on the basis of treaties with neighboring colonial powers, enjoys the exclusive privilege of exercising political influence, of concluding treaties of protectorate, of obtaining industrial concessions, and of eventually bringing the region under its

Sphere of influence.

direct political control. The dominant idea, however, is the exclusion of the political activities of other powers and the consequent reservation by the privileged state of a free hand." (Reinsch, "Colonial Government.")

The sphere of influence is a transitory condition, as has been said. The next step may be to open the territory in the sphere of influence to trading companies chartered by the great state, and to gradual settlement; or it may be definitely to occupy the territory with military force, conquer it, and annex it; or it may be (and often is) the establishment of a *protectorate*.

Protectorate.

As the word implies, a protectorate is a territory which is under the protection of a powerful state. The protectorate is the result of treaty obligations supposed to have been in all cases voluntarily accepted by the peoples of the dependent territory. Under the provisions of a treaty of protectorate the protecting state is given the right to dictate all questions of relations with outside (foreign) powers, is guaranteed to be the only state with which the peoples or tribes of the protected territory shall have political relations, and is allowed to have a resident agent in the protected territory. In general, the local government is left undisturbed.

If a protectorate were merely what the name implies, it might be administered in a way that would be a decided advantage to the people in the protected territory, but the protectorate is commonly a transitional status leading to direct dependency. The protectorate is only a temporary expedient designed to disguise to the minds of the protected territory the ultimate object of the protecting state. Thus most of the African territories originally acquired by treaties of protection have already been converted by the land-hungry states into actual possessions, into direct dependencies.

Two classes of dependencies: colonial and direct.

For the purposes of our study of government, then, dependencies may be divided into two main classes, *colonial dependencies* and *direct dependencies*. In colonial dependencies the colonies have been largely settled by citizens of the ruling state, and the population is mainly

homogeneous with the population of the ruling state. In direct dependencies the territories have been brought into subjection by force or by treaty, either directly or through the gentler gradations of sphere of influence and protectorate, and the population is mainly of a different blood and race from that of the ruling state, is in fact often savage or semi-savage in character.

II. Government in Colonial Dependencies

Government in colonial dependencies.

Government in colonial dependencies of modern democratic states does not in modern times present great difficulties. Inasmuch as the people of the colonies are chiefly of the same race and familiar with the same institutions as the people of the governing state, modern liberalism has more and more tended to extend to the former the same general political privileges as are granted to the latter. Thus in states with liberal suffrage and representative government, we may expect to find the colonial dependencies likewise enjoying the privileges of liberal suffrage and representative government. Such colonial dependencies may not incorrectly be called *self-governing colonies*.

The three most prominent examples of such self-governing colonies are Canada, Australasia, and South Africa, all three being colonial dependencies of England.

The system of government provided for these colonial dependencies closely resembles the English system in its main features. The chief executive is a governor or governor-general appointed by the English monarch and serving both as the direct representative of England and as the head of the colonial government. As the direct representative of England it is his function to prevent by the exercise of his veto power any measures inimical to the interests of the British Empire as a whole. As the head of the colonial government, he is wholly in the hands of a ministry responsible to the popular chamber of the legislature.

The governor-general seldom finds it necessary to exercise his veto power. His position is such that he can, and usually does, wield an enormous influence upon political affairs. An experienced and tactful governor can by the force of his personality so direct the policies of the ministry that his veto power will not have to be used.

Each of the self-governing colonies has a legislative body, the members of which are elected by the people on a liberal suffrage. The ministry is appointed by the governor-general from the leaders of the majority party in the legislature. The ministry can be dismissed and the legislature dissolved by the governor-general, but new elections must at once take place for a new government.

The powers of the legislature are very nearly as great as those of an independent state. The ruling state makes no attempt to interfere with the internal affairs of the self-governing colony; it has given over to the management of the colonial legislature the public lands of the territory; it even allows an astonishing amount of freedom in the tariff and trade relations which the colonies may make with foreign states, so that the world to-day beholds England with a free trade system and her self-governing colonies with a protective tariff system.

The self-governing colonies are no longer bound to England by force, for any one of the three is large and powerful enough to carry through a successful revolt, but rather by ties of interest and national pride. Before England takes any measures liable to affect the interests of these colonies, the government consults the colonies themselves; and the colonies on their part tend to respect the interests of England and to adjust their legislation accordingly. What the future of these colonies will be as they continue to develop in wealth, strength, and importance cannot be foretold. Some persons dream of new states created by simple declarations of independence on the part of the various self-governing colonies; others dream of a new and marvelous imperial federation in the legislature of which England, Canada, Australasia, and South Africa shall have equal or proportionate

weight, while the English Parliament shall legislate only for matters in the British Isles.

III. Government in Direct Dependencies

Government in direct dependencies.

To give an adequate conception of the variety of governmental forms by which the powers have endeavored to foster the mutual advantages of their own states and of their direct dependencies is a difficult problem. From the absolute monarchy type of the Belgian Congo, through the German, English, and French varieties of direct control, the gradations are numerous. To any classification that may be made certain exceptions should be noted and certain objections may be urged.

Most liberal type: French dependencies.

The general statement may be made that none of the direct dependencies of any state enjoys the degree of self-government that is enjoyed by the English colonial dependencies. The nearest approach to this is to be found in certain dependencies of France. In the early history of the acquisition of dependencies the French theory was that such dependencies should be conquered and assimilated to the civilization and laws of France as soon as possible; but in time statesmen saw the futility of trying to force French habits of thought, French tastes and customs, French laws and civilization, upon great masses of different races, some of which (as in Indo-China) had an ancient and complex civilization of their own. For the policy of conquest and assimilation, therefore, France deliberately substituted the more enlightened policy of "association," by which the ancient laws, customs, and civilization of each dependency are respected, a degree of local self-government is granted, and development of each dependency along its own characteristic lines is encouraged.

The legislative body of France has the ultimate power to fix the government and make the laws for each dependency. In this legislative body, however, the more important dependencies (as Algeria, Martinique, Guadeloupe, Réunion, French India,

French Guiana, Senegal, and Cochin China) are represented by delegates elected by a wide suffrage in the dependencies and given equal rights with the delegates from French constituencies. The general supervision of affairs pertaining to the dependencies is vested in a minister of the colonies, assisted by a council composed of elected representatives of all the dependencies. The minister of the colonies and the council have supervision over such important matters as the fixing of tariffs and the approval of the separate budgets. In the dependencies the head of the government is a governor, who is both the representative of the home country and the chief executive of the dependency. *Councils general*, partly or wholly elected by the citizens, have in the more important dependencies a considerable degree of control over local affairs. In addition to the council general the governor has a small advisory privy council, partly appointed by him and partly elected. In none of the dependencies is the governor or his advisory privy council directly responsible to the more representative council general.

English direct dependencies.

The typical government of the direct dependencies of England is theoretically less liberal than that just outlined, in that such dependencies are not allowed the privilege of representation in the English Parliament; but in practice, under a number of great administrators the system has tended to give these dependencies all the powers they could wisely exercise. The laws are typically decrees issued by the governor or commissioner with the concurrence of a privy council. Both governor and privy council are appointed by the crown. The finances are directly under the control of the crown. Such colonies, of which Ceylon is an example, are in the English system designated as "crown colonies." In England the general supervision of affairs pertaining to these dependencies is under the colonial office, whose head is the colonial secretary, a member of the English cabinet.

Because of its immense size and special importance, as well as because of the peculiar conditions due to the small English population contrasted with the enormous native population,

the government of the dependency of India is organized on a system separate from that of other crown colonies. The supreme executive head in India is the governor-general, or viceroy, appointed by and representing the crown, and an executive council of six members, all appointed by the crown. Both the viceroy and the council usually hold office for five years. For legislative purposes various persons nominated by the viceroy coöperate with the executive council. At present (1914) there are sixty-eight such members. This legislative body has, under a number of restrictions, the authority to legislate for British India, for British subjects in India, and for Indian subjects of Great Britain in any part of the world. The dependency (outside of a number of protectorates in which native Indian princes are permitted to govern their territories with the advice of a resident English agent) is divided into fifteen provinces, at the head of each of which is a British official representing, and responsible to, the viceroy. Eight of these provinces have legislative councils of their own, with limited powers. In England, the interests of India are separated from those of other dependencies and put in charge of a secretary for India (who is a member of the cabinet appointed by the crown) and a council of not less than ten and not more than fourteen members, all appointed by the crown.

India.

The German type of government for dependencies has little or no sign of liberalism. The dependencies are looked upon and treated as wholly vassal to the government of the state, incapable of any appreciable measure of self-government, and to be developed for the ultimate trade profit of Germany. The state government has not tried to impose German civilization and customs upon the subject peoples, it is true, but the theory of absolute domination and speedy development for the advantage of the ruling state is being followed. Representative institutions do not exist in the German dependencies; the executive power is vested in the agent of the government, the administration

German direct dependencies.

is carried on by a body of officials responsible to and under the direction of the government agent, and final power in all matters is concentrated in the hands of the German government in Berlin.

A most remarkable example in modern times of a government of a dependency organized and operated for the sole advantage of its ruler is to be noted in the case of the Belgian Congo. Leopold II, king of Belgium, personally financed explorations into Africa in the region of the Congo River, and finally, by virtue of these explorations and of various treaties arranged by his agents, managed, about 1885, to have recognized as a new state what is commonly called the Congo Free State. The main boundaries of the new state, to include about 900,000 square miles of territory, were determined by a series of treaties with other powers between 1885 and 1895. The Belgian parliament in 1885 authorized Leopold to be the chief of the new state and declared that the union between Belgium and the Congo Free State should be exclusively personal. This authority and declaration left Leopold at liberty to organize the government as he wished. He proceeded to create an absolute monarchy with himself as king, empowered to decree arbitrarily the civil and criminal codes of laws. The king and all the high officials of the new state resided at Brussels; a governor-general appointed by, and responsible to, the king resided in the African state and had absolute control over all the civil and military administration. As enormous wealth in rubber and ivory was revealed in the state, a system of forced labor was decreed by the king, and natives were required to dispose of the rubber and ivory they obtained to the king's agents at the king's price. Such decrees opened the way to inhuman treatment of the natives by Leopold's agents, until conditions made continuance of such a government impossible. In 1908 the Belgian parliament annexed the Congo, making it a direct dependency, organizing a government in which (as in the German system) the final authority was held by the Belgian government, and at once taking steps to correct the worst abuses under the old administration.

The Belgian Congo.

IV. The United States and its Dependencies

Policy of the United States toward dependencies.

The policy of the United States toward its dependent possessions hardly permits such possessions to be classified strictly under any one of the aforementioned categories.

Constitutional power.

Under the constitution (Art. 4, Section 3, clause 2) the Congress of the United States is given "power to dispose of and make all needful rules and regulations respecting the territory and other property belonging to the United States." This clause has been subject to interpretation as changing conditions demanded. Congress has assumed under it the right to acquire new territory, to govern territory, to admit territory to statehood, and to sell, lease, or otherwise dispose of, public lands.

The Northwest Ordinance.

The Northwest Ordinance of 1787, confirmed by the Congress of 1789, which was an ordinance to provide an organized government for the vast region west of Pennsylvania, east of the Mississippi River, north of the Ohio River, and south of Canada, served as the basis of the territorial policy of the United States from its inception to the Spanish War.

Provisions of the Northwest Ordinance.

This ordinance provided: (1) in territories having less than five thousand free men, for a governor, and a council composed of the governor and three appointed judges and possessed of certain legislative powers; (2) in territories containing five thousand free men, for an assembly, the upper house of such assembly to be appointed by Congress and the lower house to be elective; (3) for the admission of a territory to statehood when its population reached 60,000; and (4) for freedom of worship, the benefits of the writ of habeas corpus, exemption from cruel and unusual punishments, and the prohibition of slavery. In its main provisions this ordinance was reënacted in 1790 for the territory south of the Ohio River.

The above ordinance is obviously intended to provide an

organization of government to territories which are prospective States. As a matter of fact, nearly all of the States outside of the original thirteen have gone through the two stages of territorial government provided by the above ordinance; *i.e.* first, government by an appointed governor and council, and second, government by an appointed governor and a legislature of which the upper house has been appointed and the lower elected.

The purchase of Alaska from Russia in 1867 had no material effect at the time upon the policy of the United States respecting its dependent territories. Alaska was considered valuable only for its fisheries, it was sparsely inhabited, and it did not require a complex organization of government. It was not until the discovery of gold caused the great influx of Americans that territorial government was demanded by Alaska and considered by Congress. Territorial organization was conferred by Congress in 1912.

Alaska.

The great break between the old policy and the new dates from the time of the Spanish War. Since 1898 the United States has faced the problem of organizing varieties of government for types of dependencies radically different from its former territories. The dependencies acquired about this time were the following: Hawaii (annexed by joint resolution of Congress, 1898) and Porto Rico and the Philippines (ceded by Spain under the treaty of peace at the close of the Spanish War).

New policy toward dependencies.

The government for the Hawaiian Islands did not present special difficulties; there was a liberal admixture of Americans and Europeans in the population, and the country had regularly been annexed by act of Congress and was thus to be considered legally a part of the United States. There existed no reason why Hawaii should not be treated as the territories had previously been. A regular territorial government was, therefore, organized and established.

Hawaii.

The status of Porto Rico and the Philippines, however, was different. They had been acquired, not by deliberate annexation, but as a result of conquest; their peoples were in the

main alien in blood and customs from our own, and in the Philippine Islands included a considerable number of barbarous or semi-barbarous tribes. It seemed inconceivable that the United States should extend the privileges of representative government and American citizenship to the people of such dependencies.

Porto Rico and the Philippines.

On a technical question relative to the power of Congress over the tariffs in the dependencies, the matter was brought before the Supreme Court of the United States. In 1901 its decision in what is called the *Insular Cases* was handed down. By this opinion the court declared that Congress had the power to decide when territory was completely incorporated into the United States, and that Congress might make for territory not thus completely incorporated a code of laws different from the laws applying to the commonwealths. The practical effect of this decision was that Congress has the right to distinguish between dependencies of radically different characteristics, to allow to one kind of dependency a representative democratic government and to withhold such government from another kind, and to organize a government of a special kind suited to the peculiar conditions in any dependency.

Under the powers thus interpreted to be in its hands, Congress organized a government for Porto Rico and the Philippines. A special form of territorial government was provided for Porto Rico, in which the governor and a majority of the members of the upper legislative chamber are directly appointed by the President of the United States and the members of the lower chamber are elected by universal suffrage. The territory is represented in Congress by a "resident commissioner" with the power of debate but not of vote.

The act establishing civil government in the Philippine Islands was passed by Congress July 1, 1902. Under this act the government is composed of a civil governor (governor-general) and a council of seven commissioners (four American and three Filipino), all appointed by the President of the United States. The number of members of the council has since been

increased to nine, and very recently (1914) the Filipinos have been given a majority of places on the commission. In 1907 the President, in accordance with an act of Congress, directed the Philippine Commission to call a general election for delegates to a popular assembly. The first Filipino assembly was formally opened Oct. 16, 1907. Other elections have been held in 1909 and 1912. Hereafter elections will be held quadrennially. It is the apparent desire of Congress to elevate the people of these islands to such a degree of political intelligence that full independence may be granted them.

Other dependencies of the United States.

Outside of the dependencies mentioned above, the United States stands in the relation of protector or controller to some other territories.

Canal Zone.

By the Isthmian Canal Convention of Nov. 18, 1903, concluded between the Republic of Panama and the United States, the latter obtained a perpetual right of occupation, use, and control, of and over a zone of land ten miles wide across the Isthmus of Panama, paying for this right the sum of $10,000,000 and (from 1913) $250,000 a year. The United States has guaranteed the independence of the Republic of Panama. For the government of the Canal Zone Congress provided that the President shall appoint a governor and such officers as may be necessary.

Liberia.

Liberia, a republic on the west shore of Africa, was founded in 1820 by the American Colonization Society for the purpose of providing for the return to Africa of the negroes. This republic is under the protection of the United States, but the United States has no desire to change the status, as by annexing the country.

Cuba.

Cuba is at the present time virtually a protectorate of the United States. The Cuban constitution provides that the government shall enter into no foreign relations without the consent of the government of the United States and that the Cuban government must permit the United States to intervene in its affairs if such intervention seems necessary to prevent internal disturbance.

V. Effects of Acquisition of Dependencies upon Great States

The above outline of the forms of the growth and character of dependencies and the governmental policies pursued by the controlling nations toward them does not take into account the effect of dependencies upon the great nations themselves. As a matter of fact, the acquisition by the great nations of the world of dependencies has had marked effects upon the nations themselves. Internal politics, foreign relations, even the manner of thought of the people, have been radically reconstructed during this era of territorial aggrandizement.

Acquisition of dependencies has affected great states.

One great principle evolved from the French Revolution era was the principle of nationality, meaning in effect that a people allied by race, religion, and habits should ordinarily compose one homogeneous independent state. It is obvious that the acquisition of dependencies occupied by people widely different in race, religion, and habits from those of the controlling state has largely nullified the force of this principle. Germany with its large population of African negroes, France and Italy with their North African Mohammedans, England with its huge Indian territory, and the United States with its semi-savage Philippine tribes, are no longer homogeneous in population. The principle of nationality as a force in world politics is no longer considered a factor.

Nullification of principle of nationality.

The acquisition of dependencies, too, requires the maintenance of sufficient force to hold them against aggression. The enormous increase of armaments, both naval and military, dates from the dependency period. England does not need a navy twice as strong as that of any other state merely to protect its own shores, but it does need such unusual strength to keep open the communications with its scattered dependencies. The United States is in no fear of attack from hostile states, but to maintain its Monroe Doctrine, to hold Hawaii, the Philippines, and the Canal Zone, it must

Increase of armaments.

annually spend over a hundred and twenty-five millions in the development and upkeep of a large naval force. The powers that control dependencies invariably feel the necessity of developing their armaments to secure their dependencies and their trade routes.

International relations, again, have been profoundly affected. Whenever the dependencies of one power border upon those of another, especially where the boundaries are but vaguely indicated, chances for continual friction are present. Thus France and England formerly collided in India. Thus Russia and England have in the past been mutually suspicious of each other's acts in Persia and along the northernmost boundaries of Indian territories. Thus Japan and Russia came in conflict in eastern Asia. Such chances for international misunderstanding are ever present, with the possibility of a devastating war.

Chances for misunderstandings between great states.

The effect of the acquisition of dependencies upon internal issues is no less marked. Italian ministries have fallen and the government changed as a result of colonial policies in Africa. The English Parliament has ceased to legislate solely for the British Isles, but has become the legislative center for a vast empire whose ramifications extend around the world. In the United States the effect of the decision in the Insular Cases and the action subsequently taken by Congress has enormously increased the power and prestige of the central government as contrasted with the several commonwealth governments.

Effect upon internal policies and politics.

Important and difficult problems for the controlling powers have resulted from the acquisition of dependencies inhabited by alien peoples of a low degree of civilization. The education and civilization of savage or semi-savage peoples brought under their control, the protection of such peoples from exploitation, the equitable adjustment of the laws of a higher civilization to the customs and habits of a lower — these broadly are problems which have tasked the best statesmanship of the period.

Problems with respect to dependencies.

Broadening of view and deepening of patriotism among people of great states.

Perhaps the best result of the acquisition of dependencies has been the result upon the mental and political attitude of the people in the great colonial powers. A general broadening of view with a simultaneous deepening of patriotism is noticeable. The Englishman is no longer interested only in the affairs of his own small group of islands: he is interested also in Persia, Afghanistan, Australia, and the uttermost bounds of the globe. His pride in and love of the English flag is increased as he realizes that it is the flag of the sovereign power of one sixth part of the earth's surface. Similarly the Germans and the French look beyond the strict confines of their territory in Europe to their possessions abroad. In our own country the acquisition of Hawaii, Porto Rico, and the Philippines, the lease of the Canal Zone, the virtual protectorate over Cuba, and the attitude toward the whole hemisphere implied in the Monroe Doctrine have widened our political horizon enormously. We feel that the United States definitely occupies a place among the great nations of the world; we desire to uphold its dignity and increase its prestige.

Chap. X. Statistics and Illustrative Citations

1

Treaty to illustrate the Sphere of Influence

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, etc., etc., and His Most Faithful Majesty the King of Portugal and Algarves, etc., etc., with a view to settle definitely the boundaries of their respective sphere of influence in Africa, and being animated with the desire to confirm the friendly relations between the two Powers, have determined to conclude a Treaty to this effect and have named . . . their respective Plenipotentiaries. . . .

Who, having communicated to each other their respective full powers, found in good and due order, have agreed upon and concluded the following articles:

Article I. Great Britain agrees to recognize, as within the dominion of Portugal in East Africa, the territories bounded: [boundaries given.]

Art. III. Great Britain engages not to make any objection to the extension of the sphere of influence of Portugal south of Delagoa Bay, as far as a line following the parallel of the confluence of the river Pongolo with the river Maputo to the sea-coast.

Art. IV. It is agreed that the western line of division separating the British from the Portuguese sphere of influence in Central Africa shall follow the centre of the channel of the upper Zambesi, starting from the Katima Rapids up to the point where it reaches the territory of the Barotse kingdom. . . .

Art. V. Portugal agrees to recognize, as within the sphere of influence of Great Britain on the north of the Zambesi, the territories extending from the line to be settled by the Joint Commission mentioned in the preceding Article to lake Nyassa, including the islands in that lake south of parallel 11° 30′, south latitude, and to territories reserved to Portugal by the line described in article I.

Art. VI. Portugal agrees to recognize, as within the sphere of influence of Great Britain to the south of the Zambesi, the territories bounded on the east and north-east by the line described in article II.

Art. VII. All the lines of demarcation traced in articles

I to VI shall be subject to rectification by agreement between the two Powers, in accordance with local requirements. . . .

ART. VIII. The two Powers engage that neither will interfere with any sphere of influence assigned to the other by articles I to VI. One Power will not, in the sphere of the other, make acquisitions, conclude treaties, or accept sovereign rights or protectorates. It is understood that no companies nor individuals subject to one Power can exercise sovereign rights in a sphere assigned to the other, except with the assent of the latter.

ART. IX. Commercial or mineral concessions and rights to real property possessed by Companies or individuals belonging to either Power shall, if their validity is duly proved, be recognized in the sphere of the other Power. For deciding on the validity of mineral concessions given by the legitimate authority, within 30 miles of either side of the frontier south of the Zambesi, a Tribunal of Arbitration is to be named by common agreement.

It is understood that such Concessions must be worked according to local Regulations and Laws. . . .

ART. XVI. The present Convention shall be ratified and the ratification shall be exchanged at London or Lisbon as soon as possible.

In witness whereof the respective Plenipotentiaries have signed the present Convention, and have affixed thereto the seal of their arms.

Done in duplicate at Lisbon the eleventh day of June, in the year of our Lord one thousand eight hundred and ninety-one.

(L. S.) (*a*) GEORGE G. PETRE.

2

TREATY TO ILLUSTRATE THE RESERVAL OF TRADE AND ECONOMIC PRIVILEGES IN RESPECTIVE SPHERES BY CONTRACTING STATES

(*Translation*)

CONVENTION

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, and His Majesty the Emperor of All the Russias, animated by the sincere desire to settle by mutual

agreement different questions concerning the interests of their States on the Continent of Asia, have determined to conclude Agreements destined to prevent all cause of misunderstanding between Great Britain and Russia in regard to the questions referred to, and have nominated for this purpose their respective Plenipotentiaries, . . .

AGREEMENT CONCERNING PERSIA

The Governments of Great Britain and Russia having mutually engaged to respect the integrity and independence of Persia, and sincerely desiring the preservation of order throughout that country and its peaceful development, as well as the permanent establishment of equal advantages for the trade and industry of all other nations;

Considering that each of them has, for geographical and economic reasons, a special interest in the maintenance of peace and order in certain provinces of Persia adjoining, or in the neighbourhood of, the Russian frontier on the one hand, and the frontiers of Afghanistan and Baluchistan on the other hand; and being desirous of avoiding all cause of conflict between their respective interests in the above-mentioned provinces of Persia;

Have agreed on the following terms: —

I

Great Britain engages not to seek for herself, and not to support in favour of British subjects, or in favour of the subjects of third Powers, any Concessions of a political or commercial nature — such as Concessions for railways, banks, telegraphs, roads, transport, insurance, &c. — beyond a line starting from Kasr-i-Shirin, passing through Isfahan, Yezd, Kakhk, and ending at a point on the Persian frontier at the intersection of the Russian and Afghan frontiers, and not to oppose, directly or indirectly, demands for similar Concessions in this region which are supported by the Russian Government. It is understood that the above-mentioned places are included in the region in which Great Britain engages not to seek the Concessions referred to.

II

Russia, on her part, engages not to seek for herself and not to support, in favour of Russian subjects, or in favour of the

subjects of third Powers, any Concessions of a political or commercial nature — such as Concessions for railways, banks, telegraphs, roads, transport, insurance, &c. — beyond a line going from the Afghan frontier by way of Gazik, Birjand, Kerman, and ending at Bunder Abbas, and not to oppose, directly or indirectly, demands for similar Concessions in this region which are supported by the British Government. It is understood that the above-mentioned places are included in the region in which Russia engages not to seek the Concessions referred to.

III

Russia, on her part, engages not to oppose, without previous arrangement with Great Britain, the grant of any Concessions whatever to British subjects in the regions of Persia situated between the lines mentioned in Articles I and II.

Great Britain undertakes a similar engagement as regards the grant of Concessions to Russian subjects in the same regions of Persia.

All Concessions existing at present in the regions indicated in Articles I and II are maintained.

IV

It is understood that the revenues of all the Persian customs, with the exception of those of Farsistan and of the Persian Gulf, revenues guaranteeing the amortization and the interest of the loans concluded by the Government of the Shah with the "Banque d'Escompte et des Prets de Perse" up to the date of the signature of the present Agreement, shall be devoted to the same purpose as in the past.

It is equally understood that the revenues of the Persian customs of Farsistan and of the Persian Gulf, as well as those of the fisheries on the Persian shore of the Caspian Sea and those of the Posts and Telegraphs, shall be devoted, as in the past, to the service of the loans concluded by the Government of the Shah with the Imperial Bank of Persia up to the date of the signature of the present Agreement.

V

In the event of irregularities occurring in the amortization or the payment of the interest of the Persian loans concluded with the "Banque d'Escompte et des Prets de Perse" and with

the Imperial Bank of Persia up to the date of the signature of the present Agreement, and in the event of the necessity arising for Russia to establish control over the sources of revenue guaranteeing the regular service of the loans concluded with the first-named bank, and situated in the region mentioned in Article II of the present Agreement, or for Great Britain to establish control over the sources of revenue guaranteeing the regular service of the loans concluded with the second-named bank, and situated in the region mentioned in Article I of the present Agreement, the British and Russian Governments undertake to enter beforehand into a friendly exchange of ideas with a view to determine, in agreement with each other, the measures of control in question and to avoid all interference which would not be in conformity with the principles governing the present Agreement.

3

The Ordinance of 1787

An Ordinance for the Government of the Territory of the United States Northwest of the River Ohio

Be it ordained by the United States in Congress assembled, that the said territory, for the purpose of temporary government, be one district; subject, however, to be divided into two districts, as future circumstances may, in the opinion of Congress, make it expedient.

Be it ordained by the authority aforesaid, that the estates both of resident and non-resident proprietors in the said territory, dying intestate, shall descend to, and be distributed among their children, and the descendants of a deceased child in equal parts; the descendants of a deceased child or grandchild, to take the share of their deceased parent in equal parts among them; and where there shall be no children or descendants, then in equal parts to the next of kin, in equal degree; and among collaterals, the children of a deceased brother or sister of the intestate shall have in equal parts among them their deceased parent's share; and there shall in no case be a distinction between kindred of the whole and half blood; saving in all cases to the widow of the intestate, her third part of the real estate for life, and one-third part of the personal estate; and this law relative to descents and dower, shall remain in full force until altered by the legislature of the district. And

until the governor and judges shall adopt laws as hereinafter mentioned, estates in the said territory may be devised or bequeathed by wills in writing, signed and sealed by him or her, in whom the estate may be (being of full age) and attested by three witnesses; and real estates may be conveyed by lease and release or bargain and sale signed, sealed and delivered by the person, being of full age, in whom the estate may be, and attested by two witnesses, provided such wills be duly proved, and such conveyances be acknowledged, or the execution thereof duly proved, and be recorded within one year after proper magistrates, courts, and registers shall be appointed for that purpose; and personal property may be transferred by delivery, saving, however, to the French and Canadian inhabitants, and other settlers of the Kaskaskias, Saint Vincents, and the neighboring villages, who have heretofore professed themselves citizens of Virginia, their laws and customs now in force among them, relative to the descent and conveyance of property.

Be it ordained by the authority aforesaid that there shall be appointed from time to time, by Congress, a governor, whose commission shall continue in force for the term of three years, unless sooner revoked by Congress; he shall reside in the district, and have a freehold estate therein, in one thousand acres of land, while in the exercise of his office.

There shall be appointed from time to time, by Congress, a secretary, whose commission shall continue in force for four years, unless sooner revoked; he shall reside in the district, and have a freehold estate therein, in five hundred acres of land, while in the exercise of his office; it shall be his duty to keep and preserve the acts and laws passed by the legislature, and the public records of the district, and the proceedings of the governor in his executive department; and transmit authentic copies of such acts and proceedings, every six months, to the Secretary of Congress. There shall also be appointed a court to consist of three judges, any two of whom to form a court, who shall have a common-law jurisdiction, and reside in the district, and have each therein a freehold estate of five hundred acres of land, while in the exercise of their offices; and their commissions shall continue in force during good behavior.

The governor and judges, or a majority of them, shall adopt and publish in the district such laws of the original States, criminal and civil, as may be necessary, and best suited to the circumstances of the district, and report them to Congress, from

time to time, which laws shall be in force in the district until the organization of the general assembly therein, unless disapproved of by Congress; but afterwards the legislature shall have authority to alter them as they shall think fit.

The governor, for the time being, shall be commander-in-chief of the militia, appoint and commission all officers in the same, below the rank of general officers; all general officers shall be appointed and commissioned by Congress.

Previous to the organization of the general assembly, the governor shall appoint such magistrates and other civil officers, in each county or township, as he shall find necessary for the preservation of the peace and good order in the same. After the general assembly shall be organized, the powers and duties of magistrates and other civil officers shall be regulated and defined by the said assembly; but all magistrates and other civil officers, not herein otherwise directed, shall, during the continuance of this temporary government, be appointed by the governor.

For the prevention of crimes and injuries, the laws to be adopted or made shall have force in all parts of the district, and for the execution of process, criminal and civil, the governor shall make proper divisions thereof — and he shall proceed from time to time, as circumstances may require, to lay out the parts of the district in which the Indian titles shall have been extinguished, into counties and townships, subject, however, to such alterations as may thereafter be made by the legislature.

So soon as there shall be five thousand free male inhabitants, of full age, in the district, upon giving proof thereof to the governor, they shall receive authority, with time and place, to elect representatives from their counties or townships, to represent them in the general assembly: Provided, That for every five hundred free male inhabitants there shall be one representative, and so on, progressively, with the number of free male inhabitants, shall the right of representation increase, until the number of representatives shall amount to twenty-five, after which the number and proportion of representatives shall be regulated by the legislature; Provided, That no person be eligible or qualified to act as a representative unless he shall have been a citizen of one of the United States three years, and be a resident in the district, or unless he shall have resided in the district three years, and in either case, shall likewise hold in his own right, in fee-simple, two hundred acres of land within the same: Provided also, That a freehold in fifty acres

of land in the district, having been a citizen of one of the States, and being resident in the district; or the like freehold and two years' residence in the district shall be necessary to qualify a man as an elector of a representative.

The representatives thus elected, shall serve for the term of two years, and in case of the death of a representative, or removal from office, the governor shall issue a writ to the county or township for which he was a member, to elect another in his stead, to serve for the residue of the term. The general assembly, or legislature, shall consist of the governor, legislative council, and a house of representatives. The legislative council shall consist of five members, to continue in office five years, unless sooner removed by Congress, any three of whom to be a quorum, and the members of the council shall be nominated and appointed in the following manner, to wit: As soon as representatives shall be elected, the governor shall appoint a time and place for them to meet together, and, when met, they shall nominate ten persons, resident in the district, and each possessed of a freehold in five hundred acres of land, and return their names to Congress; five of whom Congress shall appoint and commission to serve as aforesaid; and whenever a vacancy shall happen in the council, by death or removal from office, the house of representatives shall nominate two persons, qualified as aforesaid, for each vacancy, and return their names to Congress; one of whom Congress shall appoint and commission for the residue of the term; and every five years, four months at least before the expiration of the time of service of the members of the council the said house shall nominate ten persons, qualified as aforesaid, and return their names to Congress, five of whom Congress shall appoint and commission to serve as members of the council five years, unless sooner removed. And the governor, legislative council, and house of representatives, shall have authority to make laws in all cases for good government of the district, not repugnant to the principles and articles in this ordinance established and declared. And all bills having passed by a majority in the house, and by a majority in the council, shall be referred to the governor for his assent; but no bills or legislative act whatever, shall be of any force without his assent. The governor shall have power to convene, prorogue and dissolve the general assembly when in his opinion, it shall be expedient.

The governor, judges, legislative council, secretary, and such other officers as Congress shall appoint in the district, shall

take an oath or affirmation of fidelity, and of office, the governor before the President of Congress, and all other officers before the governor. As soon as a legislature shall be formed in the district, the council and house, assembled in one room, shall have authority by joint ballot, to elect a delegate to Congress, who shall have a seat in Congress, with a right of debating, but not of voting, during this temporary government.

And for extending the fundamental principles of civil and religious liberty, which forms the basis whereon these republics, their laws and constitutions are elected; to fix and establish those principles as the basis of all laws, constitutions and governments, which forever hereafter shall be formed in the said territory; to provide also for the establishment of States, and permanent government therein, and for their admission to a share in the Federal councils on an equal footing with the original States, at as early periods as may be consistent with the general interest.

It is hereby ordained and declared, by the authority aforesaid, that the following articles shall be considered as articles of compact between the original States and the people and States in the said territory, and forever remain unalterable, unless by common consent, to wit:

Article I. No person, demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship or religious sentiments in the said territory.

Art. II. The inhabitants of the said territory shall always be entitled to the benefits of the writs of habeas corpus, and of the trial by jury; of a proportionate representation of the people in the legislature, and of judicial proceedings according to the course of the common law; all persons shall be bailable unless for capital offenses where the proof shall be evident or the presumption great; all fines shall be moderate, and no cruel or unusual punishment shall be inflicted; no man shall be deprived of his liberty or property but by the judgment of his peers, or the law of the land; and should the public exigencies make it necessary for the common preservation to take any person's property, or to demand his particular services, full compensation shall be made for the same; and in the just preservation of rights and property it is understood and declared, that no law ought ever to be made, or have force in the said territory, that shall in any manner whatever interfere with, or affect private contracts, or engagements, *bona fide* and without fraud previously formed.

ART. III. Religion, morality and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged. The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent; and in their property, rights and liberty, they never shall be invaded or disturbed, unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity shall from time to time be made for preventing wrongs being done to them, and for preserving peace and friendship with them.

ART. IV. The said territory, and the States which may be formed therein shall forever remain a part of this confederacy of the United States of America, subject to the Articles of Confederation, and to such alterations therein as shall be constitutionally made; and to all the acts and ordinances of the United States in Congress assembled, conformable thereto. The inhabitants and settlers in the said territory, shall be subject to pay a part of the Federal debts, contracted or to be contracted, and a proportional part of the expenses of government, to be apportioned on them by Congress, according to the same common rule and measure by which apportionments thereof shall be made on the other states; and the taxes for paying their proportion, shall be laid and levied by the authority and direction of the legislatures of the district or districts, or new states as in the original states, within the time agreed upon by the United States in Congress assembled. The legislatures of those districts, or new States, shall never interfere with the primary disposal of the soil of the United States in Congress assembled, nor with any regulations Congress may find necessary for securing the titles in such soil to the *bona fide* purchasers. No tax shall be imposed on lands the property of the United States; and in no case shall non-resident proprietors be taxed higher than residents. The navigable waters leading into the Mississippi and Saint Lawrence, and carrying places between the same shall be common highways, and forever free, as well to the inhabitants of the said Territory as to the citizens of the United States, and those of any other states that may be admitted into the confederacy, without any tax, impost, or duty therefor.

ART. V. There shall be formed in the said Territory, not less than three nor more than five states; and the boundaries of the states, as soon as Virginia shall alter her act of cession

and consent to the same, shall become fixed and established as follows, to wit: The western State, in the said Territory, shall be bounded by the Mississippi, the Ohio, and the Wabash Rivers; a direct line drawn from the Wabash and Post Vincents, due north, to the territorial line between the United States and Canada; and by the said territorial line to the Lake of the Woods and Mississippi. The middle State shall be bounded by the said direct line, the Wabash from Post Vincents to the Ohio; by the Ohio, by a direct line drawn due north from the mouth of the Great Miami to the said territorial line, and by said territorial line. The eastern State shall be bounded by the last-mentioned direct line, the Ohio, Pennsylvania, and the said territorial line: Provided, however, and it is further understood and declared, that the boundaries of these three States shall be subject so far to be altered, that if Congress shall hereafter find it expedient, they shall have authority to form one or two States in that part of the said territory which lies north of an east and west line drawn through the southerly bend or extreme of Lake Michigan: and whenever any of the said states shall have sixty thousand free inhabitants therein, such State shall be admitted by its delegates into the Congress of the United States, on an equal footing with the original states, in all respects whatsoever; and shall be at liberty to form a permanent Constitution and State government: provided, the Constitution and government so to be formed, shall be republican, and in conformity to the principles contained in these articles and so far as it can be consistent with the general interest of the confederacy, such admission shall be allowed at an earlier period, and when there may be a less number of free inhabitants in the State than sixty thousand.

ART. VI. There shall be neither slavery nor involuntary servitude in the said Territory, otherwise than in the punishment of crimes whereof the party shall have been duly convicted: provided, always, that any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original States, such fugitive may be lawfully reclaimed and conveyed to the person claiming his or her labor or services as aforesaid.

Be it ordained by the authority aforesaid, that the resolutions of the 23d of April, 1784, relative to the subject of this ordinance, be, and the same are hereby repealed and declared null and void.

DONE by the United States in Congress assembled, the 13th day of July, in the year of our Lord 1787, and of their sovereignty and independence the 12th. CHA. THOMSON, *Secy.*

4

The Decision in the Insular Cases (Extracts)

SUPREME COURT OF THE UNITED STATES

Samuel B. Downes, doing business under the firm name of S. B. Downes & Company, Plaintiffs in Error,
vs.
George R. Bidwell.

In error to the Circuit Court of the United States for the Southern District of New York.

(May 27, 1901)

This was an action begun in the Circuit Court by Downes, doing business under the firm name of S. B. Downes & Co., against the collector of the port of New York, to recover back duties to the amount of $659.35 exacted and paid under protest upon certain oranges consigned to the plaintiff at New York, and brought thither from the port of San Juan in the Island of Porto Rico during the month of November, 1900, after the passage of the act temporarily providing a civil government and revenues for the Island of Porto Rico, known as the Foraker act.

The District Attorney demurred to the complaint for the want of jurisdiction in the court, and for insufficiency of its averments. The demurrer was sustained, and the complaint dismissed. Whereupon plaintiff sued out this writ of error.

Mr. Justice Brown announced the conclusion and judgment of the Court. . . .

2. In the case of *De Lima* v. *Bidwell*, just decided, we held that upon the ratification of the treaty of peace with Spain, Porto Rico ceased to be a foreign country, and became a territory of the United States, and that duties were no longer collectible upon merchandise brought from that island. We are now asked to hold that it became a part of the *United States* within that provision of the Constitution which declares that "all duties, imposts and excises shall be uniform throughout the United States." (Art. I, sec. 8.) If Porto Rico be part of the United States, the Foraker act imposing duties upon its products is unconstitutional, not only by reason of a violation of the uniformity clause, but because by sec. 9 "vessels

bound to or from one State" cannot "be obliged to enter, clear or pay duties in another."

The case also involves the broader question whether the revenue clauses of the Constitution extend of their own force to our newly acquired territories. The Constitution itself does not answer the question. Its solution must be found in the nature of the government created by that instrument, in the opinion of its contemporaries, in the practical construction put upon it by Congress and in the decisions of this court.

The Federal government was created in 1777 by the union of thirteen colonies of Great Britain in "certain articles of confederation and perpetual union," the first one of which declared that "the stile of this confederacy shall be the United States of America." Each member of the confederacy was denominated a *State*. Provision was made for the representation of each State by not less than two nor more than seven delegates; but no mention was made of territories or other lands, except in Art. XI, which authorized the admission of Canada, upon its "acceding to this confederation," and of other colonies if such admission were agreed to by nine States. At this time several States made claims to large tracts of land in the unsettled West, which they were at first indisposed to relinquish. Disputes over these lands became so acrid as nearly to defeat the confederacy, before it was fairly put in operation. Several of the States refused to ratify the articles, because the convention had taken no steps to settle the titles to these lands upon principles of equity and sound policy; but all of them, through fear of being accused of disloyalty, finally yielded their claims, though Maryland held out until 1781. Most of these States in the meantime having ceded their interests in these lands, the confederate Congress, in 1787, created the first territorial government northwest of the Ohio River, provided for local self-government, a bill of rights, a representation in Congress by a delegate, who should have a seat "with a right of debating, but not of voting," and for the ultimate formation of States therefrom, and their admission into the Union on an equal footing with the original States.

The confederacy, owing to well-known historical reasons, having proven a failure, a new Constitution was formed in 1787 by "the people of the United States" "for the United States of America," as its preamble declares. All legislative powers were vested in a Congress consisting of representatives from the several States, but no provision was made for the ad-

mission of delegates from the territories, and no mention was made of territories as separate portions of the Union, except that Congress was empowered "to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States." At this time all of the States had ceded their unappropriated lands except North Carolina and Georgia. It was thought by Chief Justice Taney in the *Dred Scott* case, (19 How. 393, 436,) that the sole object of the territorial clause was "to transfer to the new government the property then held in common by the States, and to give to that government power to apply it to the objects for which it had been destined by mutual agreement among the States before their league was dissolved;" that the power "to make needful rules and regulations" was not intended to give the powers of sovereignty, or to authorize the establishment of territorial governments — in short, that these words were used in a proprietary and not in a political sense. But, as we observed in *De Lima* v. *Bidwell*, the power to establish territorial governments has been too long exercised by Congress and acquiesced in by this court to be deemed an unsettled question. Indeed, in the *Dred Scott* case it was admitted to be the inevitable consequence of the right to acquire territory.

It is sufficient to observe in relation to these three fundamental instruments that it can nowhere be inferred that the territories were considered a part of the United States. The Constitution was created by the people of the *United States*, as a union of *States*, to be governed solely by representatives of the *States;* and even the provision relied upon here, that all duties, imposts and excises shall be uniform "throughout the United States," is explained by subsequent provisions of the Constitution, that "no tax or duty shall be laid on articles exported from any *State*," and "no preference shall be given by any regulation of commerce or revenue to the ports of one *State* over those of another; nor shall vessels bound to or from one *State* be obliged to enter, clear or pay duties in another." In short, the Constitution deals with *States*, their people and their representatives.

The Thirteenth Amendment to the Constitution, prohibiting slavery and involuntary servitude "within the United States, or in any place subject to their jurisdiction," is also significant as showing that there may be places within the jurisdiction of the United States that are not part of the Union. To say that the phraseology of this amendment was due to the

fact that it was intended to prohibit slavery in the seceded States, under a possible interpretation that those States were no longer a part of the Union, is to confess the very point in issue, since it involves an admission that, if these States were not a part of the Union, they were still subject to the jurisdiction of the United States.

Upon the other hand, the Fourteenth Amendment, upon the subject of citizenship, declares only that "all persons born or naturalized in *the United States*, and subject to the jurisdiction thereof, are citizens of the United States, and of the *State* wherein they reside." Here there is a limitation to persons born or naturalized in the United States which is not extended to persons born in any place "subject to their jurisdiction."

The question of the legal relations between the States and the newly acquired territories first became the subject of public discussion in connection with the purchase of Louisiana in 1803. This purchase arose primarily from the fixed policy of Spain to exclude all foreign commerce from the Mississippi. This restriction become intolerable to the large number of immigrants who were leaving the Eastern States to settle in the fertile valley of that river and its tributaries. After several futile attempts to secure the free navigation of that river by treaty, advantage was taken of the exhaustion of Spain in her war with France, and a provision inserted in the treaty of October 27, 1795, by which the Mississippi River was opened to the commerce of the United States. (8 Stat. 138, 140, Art. IV.) In October, 1800, by the secret treaty of San Ildefonso, Spain retroceded to France the territory of Louisiana. This treaty created such a ferment in this country that James Monroe was sent as minister extraordinary with discretionary powers to coöperate with Livingston, then minister to France, in the purchase of New Orleans, for which Congress appropriated $2,000,000. To the surprise of the negotiators, Bonaparte invited them to make an offer for the whole of Louisiana at a price finally fixed at $15,000,000. It is well known that Mr. Jefferson entertained grave doubts as to his power to make the purchase, or, rather, as to his right to annex the territory and make it part of the United States, and had instructed Mr. Livingston to make no agreement to that effect in the treaty, as he believed it could not be legally done. Owing to a new war between England and France being upon the point of breaking out, there was need for haste in the negotiations, and Mr. Livingston took the responsibility of disobeying his instructions,

and, probably owing to the insistence of Bonaparte, consented to the third article of the treaty, which provided that "the inhabitants of the ceded territory shall be incorporated in the Union of the United States, and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages and immunities of citizens of the United States; and in the meantime they shall be maintained and protected in the free enjoyment of their liberty, property and the religion which they profess." This evidently committed the government to the ultimate, but not to the immediate, admission of Louisiana as a State, and postponed its incorporation into the Union to the pleasure of Congress. In regard to this, Mr. Jefferson, in a letter to Senator Breckinridge of Kentucky, of August 12, 1803, used the following language: "This treaty must, of course, be laid before both houses, because both have important functions to exercise respecting it. They, I presume, will see their duty to their country in ratifying and paying for it, so as to secure a good which would otherwise probably be never again in their power. But I suppose they must then appeal to the nation for an additional article to the Constitution approving and confirming an act which the nation had not previously authorized. The Constitution has made no provision for holding foreign territory, still less for incorporating foreign nations into our Union. The Executive, in seizing the fugitive occurrence which so much advances the good of their country, have done an act beyond the Constitution."

To cover the questions raised by this purchase Mr. Jefferson prepared two amendments to the Constitution, the first of which declared that "the province of Louisiana is incorporated with the United States and made part thereof;" and the second of which was couched in a little different language, viz.: "Louisiana, as ceded by France to the United States, is made a part of the United States. Its white inhabitants shall be citizens, and stand, as to their rights and obligations, on the same footing as other citizens in analogous situations." But by the time Congress assembled, October 17, 1803, either the argument of his friends or the pressing necessity of the situation seems to have dispelled his doubts regarding his power under the Constitution, since in his message to Congress he referred the whole matter to that body, saying that "with the wisdom of Congress it will rest to take those ulterior measures which may be necessary for the immediate occupation and tempo-

rary government of the country; for its incorporation into the Union." ("Jefferson's Writings," vol. 8, p. 269.) . . .

To sustain the judgment in the case under consideration it by no means becomes necessary to show that none of the articles of the Constitution apply to the Island of Porto Rico. There is a clear distinction between such prohibitions as go to the very root of the power of Congress to act at all, irrespective of time or place, and such as are operative only "throughout the United States" or among the several States.

Thus, when the Constitution declares that "no bill of attainder or *ex post facto* law shall be passed," and that "no title of nobility shall be granted by the United States," it goes to the competency of Congress to pass a bill *of that description*. Perhaps, the same remark may apply to the First Amendment, that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people to peacefully assemble, and to petition the government for a redress of grievances." We do not wish, however, to be understood as expressing an opinion how far the bill of rights contained in the first eight amendments is of general and how far of local application.

Upon the other hand, when the Constitution declares that all duties shall be uniform "throughout the United States," it becomes necessary to inquire whether there be any territory over which Congress has jurisdiction which is not a part of the "United States," by which term we understand the *States* whose people *united* to form the Constitution, and such as have since been admitted to the Union upon equality with them. Not only did the people in adopting the Thirteenth Amendment thus recognize a distinction between the United States and "any place subject to their jurisdiction," but Congress itself, in the act of March 27, 1804, (2 Stat. 298,) providing for the proof of public records, applied the provisions of the act not only to "every court and office within the United States," but to the "courts and offices of the respective territories of the United States and countries subject to the jurisdiction of the United States," as to the courts and offices of the several States. This classification, adopted by the Eighth Congress, is carried into the Revised Statutes as follows:

"SEC. 905. The acts of the legislature of any State or territory, or of any country subject to the jurisdiction of the United States, shall be authenticated," &c.

"SEC. 906. All records and exemplifications of books which may be kept in any public office of any State or territory, or any country subject to the jurisdiction of the United States," &c.

Unless these words are to be rejected as meaningless, we must treat them as a recognition by Congress of the fact that there may be territories subject to the jurisdiction of the United States, which are not *of* the United States.

In determining the meaning of the words of Article I, section 6, "uniform throughout the United States," we are bound to consider not only the provisions forbidding preference being given to the ports of one State over those of another, (to which attention has already been called,) but the other clauses declaring that no tax or duty shall be laid on articles exported from any State, and that no State shall, without the consent of Congress, lay any imposts or duties upon imports or exports, nor any duty on tonnage. The object of all of these was to protect the States which united in forming the Constitution from discriminations by Congress, which would operate unfairly or injuriously upon some States and not equally upon others. The opinion of Mr. Justice White in *Knowlton* v. *Moore* (178 U. S. 41) contains an elaborate historical review of the proceedings in the Convention, which resulted in the adoption of these different clauses and their arrangement, and he there comes to the conclusion (p. 105) that "although the provision as to preference between ports and that regarding uniformity of duties, imposts and excises were one in purpose, one in their adoption," they were originally placed together, and "became separate only in arranging the Constitution for the purpose of style." Thus construed together, the purpose is irresistible that the words "throughout the United States" are indistinguishable from the words "among or between the several States," and that these prohibitions were intended to apply only to commerce between ports of the several States as they then existed or should thereafter be admitted to the Union.

Indeed, the practical interpretation put by Congress upon the Constitution has been long continued and uniform to the effect that the Constitution is applicable to territories acquired by purchase or conquest only when and so far as Congress shall so direct. Notwithstanding its duty to "guarantee to every State in this Union a republican form of government," (Art. IV, sec. 4,) by which we understand, according to the definition of Webster, "a government in which the supreme power

resides in the whole body of the people, and is exercised by representatives elected by them," Congress did not hesitate, in the original organization of the territories of Louisiana, Florida, the Northwest Territory, and its subdivisions of Ohio, Indiana, Michigan, Illinois and Wisconsin, and still more recently in the case of Alaska, to establish a form of government bearing a much greater analogy to a British crown colony than a republican State of America, and to vest the legislative power either in a governor and council, or a governor and judges, to be appointed by the President. It was not until they had attained a certain population that power was given them to organize a legislature by vote of the people. In all these cases, as well as in territories subsequently organized west of the Mississippi, Congress thought it necessary either to extend the Constitution and laws of the United States over them, or to declare that the inhabitants should be entitled to enjoy the right of trial by jury, of bail, and of the privilege of the writ of *habeas corpus*, as well as other privileges of the bill of rights.

We are also of opinion that the power to acquire territory by treaty implies not only the power to govern such territory, but to prescribe upon what terms the United States will receive its inhabitants, and what their status shall be in what Chief Justice Marshall termed the "American Empire." There seems to be no middle ground between this position and the doctrine that if their inhabitants do not become, immediately upon annexation, citizens of the United States, their children thereafter born, whether savages or civilized, are such, and entitled to all the rights, privileges and immunities of citizens. If such be their *status*, the consequences will be extremely serious. Indeed, it is doubtful if Congress would ever assent to the annexation of territory upon the condition that its inhabitants, however foreign they may be to our habits, traditions and modes of life, shall become at once citizens of the United States. In all its treaties hitherto the treaty-making power has made special provision for this subject; in the cases of Louisiana and Florida, by stipulating that "the inhabitants shall be incorporated into the Union of the United States and admitted as soon as possible . . . to the enjoyment of all the rights, advantages and immunities of citizens of the United States;" in the case of Mexico, that they should "be incorporated into the Union, and be admitted at the proper time, (to be judged of by the Congress of the United States,) to the enjoyment of all the rights of citizens of the United States;"

in the case of Alaska, that the inhabitants who remained three years, "with the exception of uncivilized native tribes, shall be admitted to the enjoyment of all the rights," &c.; and in the case of Porto Rico and the Philippines, "that the civil rights and political status of the native inhabitants . . . shall be determined by Congress." In all these cases there is an implied denial of the right of the inhabitants to American citizenship until Congress by further action shall signify its assent thereto.

Grave apprehensions of danger are felt by many eminent men — a fear lest an unrestrained possession of power on the part of Congress may lead to unjust and oppressive legislation, in which the natural rights of territories, or their inhabitants, may be engulfed in a centralized despotism. These fears, however, find no justification in the action of Congress in the past century, nor in the conduct of the British Parliament towards its outlying possessions since the American Revolution. Indeed, in the only instance in which this court has declared an act of Congress unconstitutional as trespassing upon the rights of territories, (the Missouri compromise,) such action was dictated by motives of humanity and justice, and so far commanded popular approval as to be embodied in the Thirteenth Amendment to the Constitution. There are certain principles of natural justice inherent in the Anglo-Saxon character which need no expression in constitutions or statutes to give them effect or to secure dependencies against legislation manifestly hostile to their real interests. Even in the Foraker act itself, the constitutionality of which is so vigorously assailed, power was given to the legislative assembly of Porto Rico to repeal the very tariff in question in this case, a power it has not seen fit to exercise. The words of Chief Justice Marshall in *Gibbons* v. *Ogden*, (9 Wheat. 1,) with respect to the power of Congress to regulate commerce, are pertinent in this connection: "This power," said he, "like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution. . . . The wisdom and discretion of Congress, their identity with the people, and the influence which their constituents possess at elections are in this, as in many other instances, as that, for example, of declaring war, the sole restraints on which they have relied to secure them from its abuse. They are the restraints which the people must often rely on solely in all representative governments."

So, too, in *Johnson* v. *McIntosh*, (8 Wheat. 543, 583,) it was said by him:

"The title by conquest is acquired and maintained by force. The conqueror prescribes its limits. Humanity, however, acting on public opinion, has established, as a general rule, that the conquered shall not be wantonly oppressed, and that their condition shall remain as eligible as is compatible with the objects of the conquest. Most usually they are incorporated with the victorious nation and become subjects or citizens of the government with which they are connected. The new and old members of the society mingle with each other; the distinction between them is gradually lost, and they make one people. Where this incorporation is practicable, humanity demands, and a wise policy requires, that the rights of the conquered to property should remain unimpaired; that the new subjects should be governed as equitably as the old, and that confidence in their security should gradually banish the painful sense of being separated from their ancient connections and united by force to strangers.

"When the conquest is complete, and the conquered inhabitants can be blended with the conquerors, *or safely governed as a distinct people*, public opinion, which not even the conqueror can disregard, imposes these restraints upon him; and he cannot neglect them without injury to his fame and hazard to his power."

The following remarks of Mr. Justice White in the case of *Knowlton* v. *Moore*, (178 U. S. 109,) in which the court upheld the progressive features of the legacy tax, are also pertinent:

"The grave consequences which it is asserted must arise in the future if the right to levy a progressive tax be recognized, involves in its ultimate aspect the mere assertion that free and representative government is a failure, and that the grossest abuses of power are foreshadowed unless the courts usurp a purely legislative function. If a case should ever arise where an arbitrary and confiscatory exaction is imposed, bearing the guise of a progressive or any other form of tax, it will be time enough to consider whether the judicial power can afford a remedy by applying inherent and fundamental principles for the protection of the individual, even though there be no express authority in the Constitution to do so."

It is obvious that in the annexation of outlying and distant possessions grave questions will arise from differences of race, habits, laws and customs of the people, and from differences

of soil, climate and production, which may require action on the part of Congress that would be quite unnecessary in the annexation of contiguous territory inhabited only by people of the same race, or by scattered bodies of native Indians.

We suggest, without intending to decide, that there may be a distinction between certain natural rights, enforced in the Constitution by prohibitions against interference with them, and what may be termed artificial or remedial rights, which are peculiar to our own system of jurisprudence. Of the former class are the rights to one's own religious opinion and to a public expression of them, or, as sometimes said, to worship God according to the dictates of one's own conscience; the right to personal liberty and individual property; to freedom of speech and of the press; to free access to courts of justice, to due process of law and to an equal protection of the laws; to immunities from unreasonable searches and seizures, as well as cruel and unusual punishments; and to such other immunities as are indispensable to a free government. Of the latter class are the rights to citizenship, to suffrage, (*Minor* v. *Happersett*, 21 Wall. 162,) and to the particular methods of procedure pointed out in the Constitution, which are peculiar to Anglo-Saxon jurisprudence, and some of which have already been held by the States to be unnecessary to the proper protection of individuals.

Whatever may be finally decided by the American people as to the status of these islands and their inhabitants — whether they shall be introduced into the sisterhood of States or be permitted to form independent governments — it does not follow that, in the meantime, awaiting that decision, the people are in the matter of personal rights unprotected by the provisions of our Constitution, and subject to the merely arbitrary control of Congress. Even if regarded as aliens, they are entitled under the principles of the Constitution to be protected in life, liberty and property. This has been frequently held by this court in respect to the Chinese, even when aliens, not possessed of the political rights of citizens of the United States. (*Yick Wo* v. *Hopkins*, 118 U. S. 356; *Fong Yue Ting* v. *United States*, 149 U. S. 698; *Lem Moon Sing*, 158 U. S. 538, 547; *Wong Wing* v. *United States*, 163 U. S. 228.) We do not desire, however, to anticipate the difficulties which would naturally arise in this connection, but merely to disclaim any intention to hold that the inhabitants of these territories are subject to an unrestrained power on the part of Congress to deal with

them upon the theory that they have no rights which it is bound to respect.

Large powers must necessarily be entrusted to Congress in dealing with these problems, and we are bound to assume that they will be judiciously exercised. That these powers may be abused is possible. But the same may be said of its powers under the Constitution as well as outside of it. Human wisdom has never devised a form of government so perfect that it may not be perverted to bad purposes. It is never conclusive to argue against the possession of certain powers from the possible abuses of them. It is safe to say that if Congress should venture upon legislation manifestly dictated by selfish interests, it would receive quick rebuke at the hands of the people. Indeed, it is scarcely possible that Congress could do a greater injustice to these islands than would be involved in holding that it could not impose upon the States taxes and excises without extending the same taxes to them. Such requirement would bring them at once within our internal revenue system, including stamps, licenses, excises and all the paraphernalia of that system, and applying it to territories which have had no experience of this kind, and where it would prove an intolerable burden.

This subject was carefully considered by the Senate committee in charge of the Foraker bill, which found, after an examination of the facts, that property in Porto Rico was already burdened with a private debt amounting probably to $30,000,000; that no system of property taxation was or ever had been in force in the island, and that it probably would require two years to inaugurate one and secure returns from it; that the revenues had always been chiefly raised by duties on imports and exports, and that our internal revenue laws, if applied in that island, would prove oppressive and ruinous to many people and interests; that to undertake to collect our heavy internal revenue tax, far heavier than Spain ever imposed upon their products and vocations, would be to invite violations of the law so innumerable as to make prosecutions impossible, and to almost certainly alienate and destroy the friendship and good will of that people for the United States.

In passing upon the questions involved in this and kindred cases, we ought not to overlook the fact that, while the Constitution was intended to establish a permanent form of government for the States which should elect to take advantage of its conditions, and continue for an indefinite future, the vast

possibilities of that future could never have entered the minds of its framers. The States had but recently emerged from a war with one of the most powerful nations of Europe; were disheartened by the failure of the confederacy, and were doubtful as to the feasibility of a stronger union. Their territory was confined to a narrow strip of land on the Atlantic coast from Canada to Florida, with a somewhat indefinite claim to territory beyond the Alleghanies, where their sovereignty was disputed by tribes of hostile Indians supported, as was popularly believed, by the British, who had never formally delivered possession under the treaty of peace. The vast territory beyond the Mississippi, which formerly had been claimed by France, since 1762 had belonged to Spain, still a powerful nation, and the owner of a great part of the Western Hemisphere. Under these circumstances it is little wonder that the question of annexing these territories was not made a subject of debate. The difficulties of bringing about a union of the States were so great, the objections to it seemed so formidable, that the whole thought of the convention centered upon surmounting these obstacles. The question of territories was dismissed with a single clause, apparently applicable only to the territories then existing, giving Congress the power to govern and dispose of them.

Had the acquisition of other territories been contemplated as a possibility, could it have been foreseen that, within little more than one hundred years, we were destined to acquire not only the whole vast region between the Atlantic and Pacific Oceans, but the Russian possessions in America and distant islands in the Pacific, it is incredible that no provision should have been made for them, and the question whether the Constitution should or should not extend to them have been definitely settled. If it be once conceded that we are at liberty to acquire foreign territory, a presumption arises that our power with respect to such territories is the same power which other nations have been accustomed to exercise with respect to territories acquired by them. If, in limiting the power which Congress was to exercise within the United States, it was also intended to limit it with regard to such territories as the people of the United States should thereafter acquire, such limitations should have been expressed. Instead of that, we find the Constitution speaking only to States, except in the territorial clause, which is absolute in its terms, and suggestive of no limitations upon the power of Congress in dealing with them. The States

could only delegate to Congress such powers as they themselves possessed, and as they had no power to acquire new territory, they had none to delegate in that connection. The logical inference from this is, that if Congress had power to acquire new territory, which is conceded, that power was not hampered by the constitutional provisions. If, upon the other hand, we assume that the territorial clause of the Constitution was not intended to be restricted to such territory as the United States then possessed, there is nothing in the Constitution to indicate that the power of Congress in dealing with them was intended to be restricted by any of the other provisions.

There is a provision that "new States may be admitted by the Congress into this Union." These words, of course, carry the Constitution with them, but nothing is said regarding the acquisition of new territories or the extension of the Constitution over them. The liberality of Congress in legislating the Constitution into all our contiguous territories has undoubtedly fostered the impression that it went there by its own force, but there is nothing in the Constitution itself, and little in the interpretation put upon it, to confirm that impression. There is not even an analogy to the provisions of an ordinary mortgage for its attachment to after-acquired property, without which it covers only property existing at the date of the mortgage. In short, there is absolute silence upon the subject. The executive and legislative departments of the government have for more than a century interpreted this silence as precluding the idea that the Constitution attached to these territories as soon as acquired, and unless such interpretation be manifestly contrary to the letter or spirit of the Constitution, it should be followed by the judicial department. (Cooley's Const. Lim. secs. 81 to 85. *Lithographic Co.* v. *Sarony*, 111 U. S. 53, 57; *Field* v. *Clark*, 143 U. S. 649, 691.)

Patriotic and intelligent men may differ widely as to the desirableness of this or that acquisition, but this is solely a political question. We can only consider this aspect of the case so far as to say that no construction of the Constitution should be adopted which would prevent Congress from considering each case upon its merits, unless the language of the instrument imperatively demand it. A false step at this time might be fatal to the development of what Chief Justice Marshall called the American Empire. Choice in some cases, the natural gravitation of small bodies towards large ones in others, the result of a successful war in still others, may bring about

conditions which would render the annexation of distant possessions desirable. If those possessions are inhabited by alien races, differing from us in religion, customs, laws, methods of taxation and modes of thought, the administration of government and justice, according to Anglo-Saxon principles, may for a time be impossible; and the question at once arises whether large concessions ought not to be made for a time, that, ultimately, our own theories may be carried out, and the blessings of a free government under the Constitution extended to them. We decline to hold that there is anything in the Constitution to forbid such action.

We are therefore of opinion that the Island of Porto Rico is a territory appurtenant and belonging to the United States, but not a part of the United States within the revenue clauses of the Constitution; that the Foraker act is constitutional, so far as it imposes duties upon imports from such island, and that the plaintiff cannot recover back the duties exacted in this case.

The judgment of the Circuit Court is therefore

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.

(Cited from "Opinions Delivered in the Insular Tariff Cases in the Supreme Court of the United States," May 27, 1901. Washington: Government Printing Office.)

CHAPTER XI

THE FUNCTIONS OF GOVERNMENT

GOVERNMENT, we stated in the opening chapter, is the organization within a state for the purpose of maintaining internal peace and order, for the general welfare of the people, and preserving the national independence from foreign aggression. It follows logically that the functions which governments should exercise should be those which most perfectly secure this internal peace and order and general welfare, and this protection from external attack. Conditions in one state may warrant the government in assuming more extensive functions than are assumed by the government of a neighboring state; in times of great national peril, any government may assume much greater functions than it would assume under ordinary circumstances; but in all cases and at all times the sole justification for the functions which a state exercises is the preservation of peace and order within its boundaries to further the general welfare of its people, and the insurance of safety from external aggression.

The functions of government.

I. INDIVIDUALIST THEORIES

Radically different theories of the functions of the government under ordinary circumstances are held by different thinkers. A few generations ago a group of writers advocated the limitation of governmental powers and functions so far as possible. These "individualists," as they are called, contended that government is a necessary evil, only to be endured because, without the restraints imposed by government, the crimes of certain members of the community might threaten

Different theories of the functions of government: Individualistic.

the peace and security of all. The only chance for the full and proper development of the individual depended upon non-interference by the government. Every function exercised by the government was, according to these thinkers, an infringement on the natural inherent liberty of the individual. If it were not for the inborn selfishness of man, whereby he sought commonly to elevate himself at the expense of his fellow human beings, government would be unnecessary and men would be allowed to develop their capacities to their fullest without restraint.

The individualistic state.

What, then, would be the condition of affairs in an individualistic state? Government would exist only as a police department to punish crime, to provide for the maintenance of peace and order, and to enforce contractual obligations. There would be no governmental ownership of railroads, of telegraphs, or even (according to some) of the post office; no governmental regulation of corporations or of labor; no governmental support of libraries, museums, and the like; no provision by the government for public education, health, or sanitation: — such functions of the government are to be condemned, according to the individualists, as infringing upon private enterprise or encroaching upon private liberty.

Argument for individualistic state.

The individualists argued for their ideas by emphasizing the evils of over-government in paralyzing men's initiative, and by pointing to the analogy of the natural world where the principle of the "survival of the fittest" resulted (they claimed) in the evolution of a higher type of being. Where men become accustomed to look to the government for help, they lose the ability to help themselves and tend to degenerate. Allow a free competition without governmental assistance, and the individual strains to his utmost capacity to survive in the struggle and thus develops his powers more and more. The superman, the ideal man of a type above what we know at present, is only to be evolved, they asserted, under such conditions.

The most fundamental weakness in the individualistic theory lies in its emphasis upon the development of *man* as opposed to the welfare of the whole *group of men*. Government is not an organization for the sole purpose of evolving a few supreme individuals: it is rather an organization to secure conditions under which the general welfare of the whole people is furthered. With the results of the Industrial Revolution — the sudden growth of huge cities with their new problems of public health, sanitation, transportation, and the like, the building of great factories housing the machinery which the workmen needed in order to make a living, the amassing of immense fortunes which gave the possessor overmuch power for good or for ill — a reaction against the individualistic theories set in. The welfare of the whole group required that strict sanitary regulations be imposed upon each person for the benefit of all persons, that regulations be imposed upon the individual factory owner to protect the relatively helpless mass of workers, that the ignorant be protected by governmental regulation from the results of their own ignorance; in short, that the government act more and more as the trustee of the people as a whole to administer the aggregate power of the state for the general welfare. With the spread of liberalism to the extent that the people actually do exercise a control over their government, the former distrust of government has naturally disappeared. When the government owns or manages the railroads or supply plants, when the government introduces a system of compulsory education, when the government establishes a great library or museum, or equips scientific expeditions, the people no longer are inclined to condemn these activities as encroachments upon individual enterprise, but to welcome them as the acts of their own collective agency intended for their own collective benefit. The doctrines of the individualists are discredited at the present time.

Weakness of individualistic system.

II. Socialist Theories

Socialistic theory of the functions of government.

The exact antithesis of the individualistic theory of the functions of government is the socialistic. Whereas the individualist believes in the minimum of government, the socialist believes in the maximum; whereas the individualist looked upon government as a necessary evil, the socialist looks upon it as the supreme good.

Socialism pictures the government as owning all the means of production, communication, transportation, and distribution. Thus all the land, mines, water supplies, forests, gas supply plants, power plants, and the like would belong directly to the government; all the telegraph and telephone lines would belong to the government; all the railroads, trolley lines, steamship lines, and stage lines would belong to the government; and all the wholesale and retail markets, stores, and shops would belong to the government. To work these various agencies, all the people of the state would be organized by, and be under the control of, the government. The government would be the sole employer of labor. The socialistic state would be a huge coöperative community under government management. Government ownership and organization, and general coöperation among the people of the state, are the essential features of the socialist theory.

The socialist state.

What, then, would be the system in the ideal socialist state?

Politically, it would be more nearly a perfect democracy than any with which we are familiar. The initiative, referendum, and recall, the most effective measures for accurate representation of all sections of the community, entire responsibility of every official of the government at any and all times to the people, — such devices would be introduced to insure democracy.

Economically, the socialist proposes to replace the present competitive system of private capital with a system by which the community shall own the means of production and dis-

tribution and shall use these for its own benefit. The community is to be organized into labor forces for production and to each laborer is to be distributed a part of the production proportionate to the amount of labor performed. Workmen will still be workmen, but they will be working for the state with tools belonging to the state and will be paid the full value of their labor by the state, instead of working for the individual capitalist with tools belonging to the capitalist and being paid by the capitalist a sum less than the full value of his production. "Surplus value" (*i.e.* the value of the completed product over and above the cost of production), which formerly constituted *profits* for the capitalist, will cease to exist; wages as such will be transmuted into an income representing a share in the national production exactly proportioned to the individual's share in that production. All workers, whether directly producing articles of consumption such as wheat, corn, meat, cotton, or whether of service to the community as lawyers, musicians, teachers, will receive a share of the total production directly proportioned to the time they have spent in work for the community. Furthermore, income from other sources than labor performed will not be possible under the socialist system. The use of property as a means of getting more property, as by loaning it for interest, or (what is equivalent) investing it in stocks with the expectation of receiving dividends, or building houses to rent to others, is absolutely forbidden under the socialist system, whereby the only source of income shall be labor. The results must be, the socialists claim, a practical equality in income.

The socialist government will be systematized in vast departments. The department of production, by means of monthly and yearly statistics collected from all sections of the community, will estimate the amount of each product necessary, — the amount of food products, cloth products, building material, manufactured products, etc. With this determined in advance in the form of a huge budget, the department will apportion to the different communities their labor of pro-

duction, whether agricultural or mechanical. A department of distribution will undertake all the complicated wholesale and retail businesses of the system familiar to us. It will take the products from the department of production, arrange with the department of transportation for their delivery into certain central warehouses, and prepare to distribute to each citizen his pro rata proportion of the material. The department of labor will have the huge task of apportioning the masses of people to the necessary tasks for production, transportation, and distribution of goods. The workmen will theoretically be free to choose which field they wish to enter, but in case too many apply for one field and too few for another, the labor department will be justified in lowering the value of an hour's labor in the former in order to repel workmen and in increasing the value of an hour's labor in the latter in order to attract workmen. A large group of socialists advocate the abolition of money: payment for labor is to be in the form of labor checks, exchangeable for commodities at the public storehouse. Other departments, many of them, and bureaus as subdivisions of the departments, will be necessary to manage the complicated affairs and meet the manifold needs of a nation of a hundred millions of people: the rough outline which has been given of three of these will, however, serve to indicate the radical change in economic conditions proposed by socialism.

Socially, the change which the socialist claims will result from the proposed system is equally radical. With the abolition of any form of income except that obtained from labor performed, and with the establishment of the ideal democracy, the social inequalities due to great wealth must inevitably disappear. The individual may save and thus accumulate for himself or his family some wealth, but with the opportunities removed for the investing of that wealth to obtain other wealth in the form of interest, rent, or dividend, his wealth only temporarily can raise him or his family above the common necessity of labor. The economic equality thus introduced spells social equality and equal opportunity for all.

The above picture of the ideal socialist state is attractive; there are, however, greater difficulties in the way than the socialists seem willing to admit.

Difficulties in carrying out the socialistic scheme.

The destruction of private ownership in productive property is certain to remove one of the sharpest spurs to individual incentive. It can hardly be denied that the accumulation of sufficient capital to provide an income for old age, or to insure the care of one's family in the event of one's death, or to widen one's social opportunities, is at present an incentive to many men to put forth their utmost efforts in labor. If the possibility of such income be removed, if the earnest, self-sacrificing man be paid with the same labor-check you give to the indifferent and lazy, it is too much to expect of human nature that the former's earnestness and zeal will continue. It seems to our modern ideas unfair that the inventor who saves the labor of thousands by some device, the chemist whose discoveries result in a new treatment of some deadly disease, the surgeon whose skill operates to save lives, should be paid on the same basis as the truck driver. Is the manager and director of the state's huge steel factory to receive approximately the same labor time-check as the night watchman at the same factory? Equality of income spells the death of initiative and energy.

Again, the socialist inveighs against the corruption and inefficiency of government under the present system: can he imagine that a government with infinitely more complex problems will be less corrupt? When the functions of a government are increased in number and widened in scope, the difficulties are immeasurably heightened. To put upon the government the determination of supply and demand for a nation of one hundred millions, the management of the entire wholesale and retail distribution of the products, the operation of all means of transportation and communication, and to expect efficiency under such circumstances, is visionary.

It may be fairly argued, also, that the socialist régime would result in a general deterioration in the character of the individ-

uals in the state. Lacking the personal incentive to labor, all men would tend to do their work indifferently and inefficiently. It is not enough to argue that a man in working for the democratic state is in reality working for himself: the results of his labor are too diffused for him to appreciate its value to himself. He would be but one of a hundred millions producing for the welfare of the whole hundred millions. His consciousness of the benefits that would accrue to the whole hundred millions by his zealous labor as an individual would not, as human nature is at present constituted, inspire him.

On the whole, the socialist state incurs the suspicion of not being practical. Were men all altruistic, to be inspired by a high zeal for the common good of all fellow-men, the socialist state would be an ideal form of organization. With human nature as it seems still to be in this era, men need all the spurs of necessity and ambition to do their best work for themselves and for mankind.

III. "General Welfare" Theories

The "general welfare" theory with respect to the functions of government is that government should exercise such functions as tend to maintain and develop the general welfare of the people. In a sense, of course, both the individualistic and socialistic theories are also general welfare theories, for the adherents of each believe that the general welfare of the people in the state would be promoted by their respective systems. The term "general welfare," therefore, is used merely as a convenient distinguishing name.

General welfare theory.

In the individualistic system the functions of government are rigidly fixed at the irreducible minimum; in the socialistic system these functions are extended to and maintained at the maximum; in the general welfare system the functions are assumed to shift according to conditions. In a state where the economic education of the people is on a relatively low plane, it may be advisable for the general welfare of the com-

munity for the government among its various functions to stimulate enterprise by entering the industrial field itself; in a neighboring state where conditions differ and the people are quick to discern and advance their own economic interests, the government may restrict its functions and allow an ever increasing amount of liberty to individuals to develop themselves to their best capacity. The flexibility of the general welfare theory as contrasted with the rigidity of the individualist and socialist theories is one of its most attractive features.

The obvious difficulty in this system lies in the determination of the functions which are conducive to the general welfare of the community. Wherever government extends its functions, there will always be bitter critics who point out the infringement upon the liberties of the individual; on the other hand, wherever government deliberately limits its functions, there will be equally bitter critics who lament the withdrawal of protection and encouragement from needy elements in the community. To illustrate these statements, it is only necessary to refer to the outcry in England at first when the factory and mining laws were enacted, and to the protest in the United States against the lowering of the high protective tariff. It may be taken for granted that under no circumstances will the scope of the government's functions be satisfactory to all persons and classes in the community. The government's primary duty under this system is to ascertain by all means possible the greatest good for the greatest number, and to take measures accordingly.

Difficulty of determining proper functions under general welfare system.

However difficult its application, the general welfare theory of the scope of governmental functions is in favor with states at the present time. The individualist theory is discredited, the socialist theory is distrusted: there only remains the effort of the government to exercise such functions as may increase the general welfare of its people.

IV. Functions exercised by Modern Governments

In general, the functions exercised by modern democratic governments may be differentiated into two classes, necessary (or essential) and optional (or unessential). Naturally, with respect to the necessary functions a substantial agreement in the practice of states is to be found which may not be found with respect to the unnecessary or optional functions. The unnecessary or optional functions, however, indicate more strikingly the general character of the governments examined.

Classes of functions.

V. The Necessary Functions of Government

The necessary functions of a government are those functions which it *must* exercise in order to insure internal peace and order and protection from external attack. They are the functions which all governments, from the primitive and rudimentary to the civilized and complex, find it essential to exercise in order to fulfill the primary purpose of the government's existence. These necessary functions may be classified as military, financial, and civil.

Necessary functions.

(*a*) *Military*

The military function of the government was the original, and is still the chief, function of the government. The very existence of the state depends upon the readiness of the government to wage war when the nation's safety or vital interests are at stake.

I. Military function.

Theoretically, for the enforcement of its military function a government may impress all able-bodied men in the state. Such impressment may practically be undertaken in critical war times. In ordinary times, however, a government maintains in constant readiness certain military forces for use in emergency. In states whose position renders them peculiarly liable to attack by land, the need of enormous armies has made compulsory military service for all able-bodied men

between certain ages an essential governmental policy. Thus the governments of France and Germany each maintain under arms and in reserve nearly the entire male population of their respective states, and expend annually enormous sums (France approximately $185,000,000, Germany $200,000,000) in maintaining the armies in perfect condition. In states where danger of attack by land is remote, as England and the United States, armies are recruited by voluntary enlistment, such "regular" troops to be reënforced in time of war by militia troops and volunteers. Armies voluntarily enlisted are, it is logically argued, immensely superior to those gathered by compulsory service laws, for a relatively small proportion of shirkers enlist and the army is composed of men who innately love the life. In states with long and important seacoasts and with oversea possessions requiring defense, governments are forced to develop powerful navies. Thus England tries to maintain a navy equal to the navies of any two other states and spends over $200,000,000 annually in increasing its ships and training its men.

The modern developments in tactics and strategy, both for armies and navies, require the most careful organization and most efficient handling of the military forces at the disposal of the government. Hence the armies and navies are officered from the lowest to the highest command by men especially trained (often in special schools) for their duties. Hence, too, armies are organized into different "arms," as infantry, cavalry, artillery, engineers, according to the special weapons, limitations, and uses of the force concerned, and ships in the navies are built for particular purposes, as battleships, cruisers, torpedo boats, etc. Each detail of organization is planned to keep the army and navy of the government concerned abreast of, if not ahead of, the military forces of other states.

A government maintains its military forces for use in two kinds of emergencies; namely, foreign war and domestic disorder. The protection of the honor and interests of the state from foreign aggression has always been a proper field for the government's military forces, but the

Uses of the military.

exercise of the military function by the government in internal affairs was long resented. Individuals felt that they could take care of themselves. The associations of men for mutual protection in former times, the guilds, the orders of knighthood, the secret societies, and the like, all show conclusively how readily men united for their own protection and how little they desired governmental interference in what they believed to be their individual rights and interests. But side by side with groups organized for the protection of their members, were other groups, as of bandits and criminals, organized to prey upon society as a whole. Against these groups the government, representing the interests of the entire people, used its military forces. Likewise, the government found it essential to exercise its military function to enforce compliance with the laws of the community, as by suppression of rebellions, riots, and similar disturbances.

Executive head is head of military forces.

The ultimate responsibility and direction for the use of such forces is vested in the executive head of the state. In most modern governments, however, the power to declare war is vested in the legislative body, thus putting into the hands of the representatives of the people the initial move in an armed conflict with a foreign state; but after war is declared, the chief executive, aided by his cabinet officers and military and naval advisers, is responsible for the conduct of operations. In the use of the military forces for the suppression of disorder within the state, no special consent of the legislative body is necessary and the chief executive takes such measures as in his judgment and that of his advisers seem necessary.

(*b*) *Financial*

II. Financial function.

The financial functions of a government are those functions having to do with the collection and expenditure of funds for the government's maintenance and operation. A government exercises the right to exact from the people it controls the funds necessary for its own

maintenance and for the performance of its varied services; it exercises the right also to expend the funds it exacts in such ways as according to its judgment best serve the fundamental purpose of its existence. Its methods and activity in exacting, handling, and expending the funds constitute the financial functions of the government.

Modern governments obtain the funds necessary for their maintenance and operation by the exaction of compulsory contributions variously known as taxes, rates, assessments, duties, fees, imposts, tolls, licenses, etc. A consideration of the first aspect of the financial functions of a government, then, involves a consideration of the nature, principles, kinds, and methods of taxation.

Taxation is method of securing funds.

Taxation is the act or process of assessing and collecting from a people a portion of their property for the maintenance and operation of their government. Inasmuch as the command of a constant and adequate revenue is essential to the existence of organized government, the power to tax is a necessary attribute of sovereignty. Organized government must be maintained, and the means for such maintenance comes from taxation.

There never has been a science of taxation according to the definitely stated principles of which government could adjust its taxes; taxes have been levied under the influence of existing circumstances rather than in accordance with acknowledged principles of equality, justice, and reason. Human selfishness and greed have at different times imposed almost every conceivable form of tax, but never with sole reference to the economic principles involved. "The act of taxation consists," said Louis XIV's minister, Colbert, "in so plucking the goose (*i.e.* the people) as to produce the largest quantity of feathers with the least possible amount of squealing."

Although there is no accepted science of taxation, students of finance have from time to time advanced certain facts with respect to taxation which have been generally accepted as

sound. Most important are the four cardinal facts set forth by Adam Smith as follows:

"I. The subjects of every state ought to contribute toward the support of the government, as nearly as possible, in proportion to their respective abilities; that is, in proportion to the revenue which they respectively enjoy under the protection of the state. The expense of government to the individuals of a great nation, is like the expense of management to the joint tenants of a great estate, who are all obliged to contribute in proportion to their respective interests in the estate. . . .

"II. The tax which each individual is bound to pay, ought to be certain, and not arbitrary. The time of payment, the manner of payment, the quantity to be paid, ought all to be clear to the contributor, and to every other person. When it is otherwise, every person subject to the tax is put more or less in the power of the tax-gatherer, who can either aggravate the tax upon any obnoxious contributor, or extort, by the terror of such aggravation, some present or perquisite to himself. . . .

"III. Every tax ought to be levied at the time, or in the manner, in which it is most likely to be convenient for the contributor to pay it. . . . Taxes upon such consumable goods as are articles of luxury are all finally paid by the consumer, and generally in a manner that is very convenient for him. . . .

"IV. Every tax ought to be so contrived as both to take out and to keep out of the pockets of the people as little as possible, over and above what it brings into the public treasury of the state. A tax may either take out or keep out of the pockets of the people a great deal more than it brings into the public treasury, in the four following ways. First, the levying of it may require a great number of officers whose salaries may eat up the greater part of the produce of the tax, and whose perquisites may impose another additional tax upon the people. Secondly, it may obstruct the industry of the people, and discourage them from applying to certain branches of business which might give maintenance and employment to great multitudes. While it obliges people to pay, it may thus diminish, or perhaps destroy, some of the funds which might enable them more easily to do so. Thirdly, by the forfeitures and other penalties which those unfortunate individuals incur who attempt unsuccessfully to evade the tax, it may frequently ruin them, and thereby put an end to the benefit which the community might have received from the employment of their capitals. . . . Fourthly, by subjecting the people to the frequent visits and the odious examination of the tax-gatherers, it may expose them to much unneces-

sary trouble, vexation, and oppression; and though vexation is not, strictly speaking, expense, it is certainly equivalent to the expense at which every man would be willing to redeem himself from it. It is in some one or other of these four different ways that taxes are frequently so much more burdensome to the people than they are beneficial to the sovereign." ("Wealth of Nations," Book V, Chap. II.)

In addition to the above principles set forth by Adam Smith we may add the following:

V. The subjects of taxation "are persons, property, and business. Whatever form taxation may assume, whether as duties, imposts, excises or licenses, it must relate to one of these subjects. It is not possible to conceive of any other, though as applied to them the taxation may be exercised in a great variety of ways." (Opinion U. S. Supreme Court. Foreign-held Bond case, 15 Wallace.)

VI. Taxation must be for, and only for, public purposes. Any exaction of any kind by the government for other than public purposes is tyrannical and unlawful. The right of taxation is only vested in the government on the ground that government serves the ends of the whole community; consequently such right may legally be exercised only for use in the service of the whole community.

VII. "All subjects over which the sovereign power of the state extends are objects of taxation, but those over whom it does not extend are, on the soundest principles, exempt from taxation." (Opinion U. S. Supreme Court. Chief Justice Marshall.) Thus the legal power of taxation extends as far as, and no farther than, the territorial limits of the state sovereignty.

VIII. The taxation scheme should be capable of expansion or contraction to meet corresponding expansion or contraction in the necessary expenditures. A rigid system, not changeable except with great difficulty, will involve a government in severe financial stringency if some emergency (as war) requires an immediate increase in revenues.

Kinds of taxes: direct and indirect.

For convenience of treatment, the kinds of taxes now imposed by governments may be classified as *direct* and *indirect*. A direct tax is one which is exacted directly from the person on whom the burden of the tax is expected to fall. Thus a poll tax is a direct tax, inasmuch as the burden of paying it remains upon the person from whom it is directly exacted. An indirect tax, on the contrary, is a tax exacted from a person other than

the one on whom the burden is expected ultimately to fall. Thus a customs duty is an indirect tax, since the burden of it is shifted by the importer (from whom it is exacted) to the ultimate consumer by means of an increased charge which the importer puts upon the goods.

Forms of direct tax: the poll tax.

The simplest form of direct tax is that used in the preceding paragraph as an illustration; namely, the poll tax. At the present time only one government, France, exacts a poll tax from all its citizens. In France the poll tax (*impôt personnel*) is supposed to represent three days' wages provided that a day's wages be estimated at not less than one half franc and not more than one and one half francs. In about one half of the separate commonwealths in the United States a poll tax is imposed. In a few cases in the United States the tax is imposed by the commonwealth for commonwealth purposes, but in general it is a local tax, the proceeds of which are expended for such local objects as the maintenance of roads and highways. The payment of the poll tax is in France and in some commonwealths (Massachusetts, for example) a necessary preliminary to the exercise of the rights of citizenship.

The chief objection to a poll tax is its obvious injustice, in that the burden is relatively heavy upon a poor man and light upon a rich man.

The income tax.

A second form of direct tax very commonly imposed by governments is an income tax. An income tax is a tax levied upon personal incomes, usually with an exemption to incomes below a stipulated amount. The adoption of the income tax so widely is due to the need of greater revenue for the government and the belief that the income tax provides just distribution of the burden of taxation upon those who are best able to support it. At the present time England, France, Prussia, Italy, Austria, Switzerland, Spain, Denmark, Sweden, and the United States (since 1914) impose such taxes. The amount of exemption and the rate of taxation differ widely. In Italy exemption is granted only to incomes

below $78 a year, in England to incomes below $780 a year, but in the United States such exemption extends to all incomes below $4000 a year ($3000 for unmarried persons). In some states the rate or per cent of tax remains the same for all incomes, in others (including the United States) the rates are advanced with the size of the income; in some states the rate or per cent of tax is higher upon the income of property than upon the income from personal services (pay, wages, salary).

The chief objection to this tax is the difficulty of assessment. The individual is tempted to evade an honest statement of his income, and yet will resent the inquisitorial methods necessary on the part of government officials. In states where the exemption line is placed high in the scale, as in the United States, the claim is urged that an undue proportion of the burden of taxation is laid upon the relatively wealthy, thus bringing the income tax law into the region of class legislation.

A third kind of direct tax of importance is an inheritance tax. An inheritance tax is a tax upon the devolution of a deceased person's property to his heirs or legatees. The theory upon which such a tax is laid is that the heir or legatee has no natural right to inherit the property of a deceased person but that the state concedes and grants the privilege; therefore, the state has a constitutional right to declare the terms upon which the estate shall devolve to heirs or legatees. The tax is usually considered equitable and equal in its operation. In the application of the tax, a lesser burden is usually laid upon direct heirs than upon collateral heirs or legatees. In many states the tax is graduated from a small per cent to a larger per cent according to the amount of property involved. Thus in England, under the schedule adopted in 1910, inheritance taxes ("death duties," as they are called in that country) are laid in a progressive scale from 1 per cent on the smallest inheritance above £100 to 15 per cent on amounts above £1,000,000.

The inheritance tax.

The inheritance tax is easy of collection and yields annually a large income. It is at present levied in nearly all the European countries and in all but ten of the commonwealths of the United States. It has been levied by the central government in the United States, but only in emergencies.

The most important of the direct taxes is what may be called a property tax, *i.e.* a tax levied upon property of any kind or of whatever nature. The general theory underlying the imposition of this tax is that each owner is guaranteed and protected in the possession of his property by the state and therefore should willingly contribute to the state in proportion to the amount thus guaranteed and protected.

The property tax.

Property is commonly divided into two classes, real and personal. Real property consists strictly of property in land and houses; personal property is all other property, in general consisting of chattels, things temporary or movable.

The tax upon real property, property in land and houses, is easy to assess and cannot be evaded. Such property cannot be concealed and unpaid taxes are a first charge against the property. The ease of assessment and collection has led a group of political economists to advocate a single tax on real estate to replace all the varied taxes imposed to-day.

The tax upon personal property is one of the most difficult to assess and collect of all the direct taxes. Under modern conditions, where such an enormous amount of personal property is in the form of evidences of indebtedness, such as certificates of stock, mortgages, bonds, and the like, the ease with which it may be concealed has led to wholesale evasion of the tax. To be assured of a complete declaration of personal property, government officials must use inquisitorial methods which would be deeply resented by individuals, which would indeed probably result in a political upheaval. No assessor can possibly find the true amount of personal indebtedness without such methods. Most commonwealths of the United States have provisions for the taxation of all personal property

over a specified amount (as $50), but the enforcement of the tax is commonly acknowledged to be impossible. The personal property tax is the most unsatisfactory of the direct taxes.

The indirect tax.

Of the indirect taxes, the most important are the customs duties (tariffs) and the excise tax.

Tariffs, or customs duties.

Tariffs, customs, or customs duties are taxes imposed on commodities imported into, or exported from, a country. Export customs are seldom imposed and may therefore be disregarded. Import customs or tariffs form in most countries the most prolific source of revenue for the central government.

Kinds of tariffs.

Tariffs may be distinguished as revenue tariffs, protective tariffs, and retaliatory tariffs. A revenue tariff is a tariff imposed solely for the purpose of revenue. A protective tariff is a tariff imposed for the artificial fostering of home industries by so taxing imports that they cannot compete with home products. A retaliatory tariff is a tariff levied by one country under such rules as to affect imports from a country suspected of discriminating by a high tariff against the particular products of the first country.

Difficulties in tariff systems: 1. Specific and *ad valorem* duties.

Tariffs, or customs duties, are easy to collect but difficult to adjust. The first difficulty that presents itself is the question whether to tax commodities according to a specific duty (as by weight, measurement, or the like), or *ad valorem*, according to market value. The specific duty exacts so much tax for each pound, yard, or square foot of commodities of a given kind without regard to their relative fineness or value. The *ad valorem* duty exacts a percentage tax based on the market value of the goods. Specific duties are comparatively simple to assess and collect, but seem unjust to importers of lower grades of goods. *Ad valorem* duties are difficult to assess, owing to the fluctuations in market values, and require the employment of a large force of trained experts in various lines.

The second great difficulty in fixing the tariff is to determine what commodities to tax and how much tax to exact.

2. Determination of taxable commodities.

So far as any general principle is observable in the tariff history of modern states it is that the imports of luxuries shall be taxed and taxed heavily and the imports of necessities shall be taxed lightly or not at all. Thus, wines and precious stones are commonly taxed at an extraordinarily high rate, and meats, grains, and clothing fabrics are commonly admitted free or with a very low tariff. All the great nations of the world, with the single exception of England, exact a tax upon a large number of different articles imported into the country. England has, by a series of parliamentary measures since 1840, established practical free trade, retaining at present only about twenty-five articles as dutiable (including tobacco, tea, sugar, spirits, wine, motor spirits, coffee, chicory, cocoa, and dried fruit).

Excise or internal revenue taxes.

The excise duties, or, as they are called in the United States, internal revenue taxes, comprise all those taxes levied upon the manufacture, sale, or consumption of commodities within the limits of a country. All prominent governments of the modern world derive a large proportion of their income from the exaction of such taxes. Such taxes are easily assessed and collected and impose but an infinitesimal tax upon the ultimate consumer. Although they are unpopular, they are probably less objectionable in their political and economic effects than the customs duties (tariffs).

Chief commodities taxed.

The chief income from excise duties has in the past been from tobacco and spirituous and fermented liquors. In 1909 the United States imposed an internal revenue tax on the net income, over and above $5000, of all business corporations whose primary object is money making. At present the income from internal revenue is derived in the United States from the following taxes: spirituous and fermented liquors, tobacco manufactures, oleomargarine and "process" butter, filled cheese, playing cards, and corporations.

An excise tax has always been unpopular. To yield an appre-

ciable amount of revenue, it must be imposed on an article of general consumption, and when thus laid it results in a rise in price, thus throwing the burden of the tax upon the great masses of relatively poor people. The assessment and collection of such a tax, too, requires restrictive regulations by the government over manufacturers or dealers, and such regulations are always a cause of annoyance and trouble. However, if the excise is imposed upon only a few articles of luxury, as tobacco and spirituous and fermented liquors, these objections are not of great force.

Of the method of assessment and collection of taxes little need be said. In ancient times, and under retrogressive governments (as Turkey) in modern times, the practice of "farming out" taxes was common. This consisted in a leasing out of taxes for a fixed sum to a person authorized to collect and retain them. Many abuses flourished under this system: agents of the tax farmers scrupled at nothing to wring excessive amounts from the people; immense and illegitimate fortunes were thus gained; and unhappy communities rose in insurrection against governments permitting such evils. At present the practice of assessment and collection of the taxes by regularly appointed officials of the government is universal in civilized states. The rate of taxation is public, and the opportunities for extortion are reduced to a minimum.

Taxation: method of assessment and collection of taxes.

In adjusting the state revenue to the expenditure, most modern governments have established the "budget" system. The budget consists of a tabulated statement of estimated revenue and estimated expenditure. It is commonly drawn up under the direction of one of the members of the cabinet and presented to the legislative body for approval. Whenever the estimated necessary expenditures exceed appreciably the estimated revenues, suggestions for increased taxation to cover the estimated deficit often accompany the budget and are likewise presented to the legislative body for action.

The budget system for adjusting revenue to expenditure.

For example, in England the chancellor of the exchequer, who is a member of the cabinet, presents to the House of Commons, usually in April of each year, (1) a statement of the actual results of the revenue and expenditure during the last fiscal year ending March 31, and (2) a statement estimating the revenue and expenditure for the coming twelve months. Parliament acts upon these statements, incorporating in a bill the provisions for any new taxes deemed necessary and advisable. When the reports have been approved, the budget is passed as the *Finance Act*. A substantially similar method is followed in the great continental states, France, Germany, Austria, Italy, and Spain.

The budget in England and continental states.

In the United States the secretary of the treasury makes estimates of the necessary expenditures for the government, and these estimates are presented to Congress, but the actual expenditures are made by means of bills introduced by several different committees. Thus a balance sheet is not considered by Congress as a whole, and there is no real consideration of a budget. The result has been that a regrettable confusion often exists with respect to the amount available for expenditure. Revenues are exacted without accurate estimation of the needs of the government, and then money is spent to balance the revenues. In cases where the necessities of government actually exceed the revenues, the government resorts to borrowing. Large bond issues are made to cover deficits which should have been foreseen and covered by a slight increase in some elastic tax, as the tax on liquors, tobacco, or the like.

The system in the United States.

In contradistinction to the unscientific methods of the federal government in the United States in managing its revenues and expenditures, the separate commonwealths and the various municipalities have almost universally adopted the budget system. In these smaller units the items of revenue and expenditure can be and are accurately estimated beforehand and the necessary legislation passed.

The expenditure of the state funds is, in all great modern democratic states, in the hands of the representatives of the people and constitutes one of their chief functions. In states having the budget system the passing of the Finance Act disposes of the financial expenditures for the most part; in the United States each separate appropriation bill submitted by the committees requires long consideration and debate in both chambers before its passage. Thus, for example, the bill submitted by the committee on military affairs commonly undergoes months of discussion before it is passed.

Expenditure of state funds controlled by legislative body.

(c) *Civil*

The third necessary function of government is what may be termed the civil function. The state in the exercise of its civil function regulates the relations, social, economic, and political, between its individual citizens. The exercise of this function requires that the state provide for the enforcement of contractual obligations, regulate the conditions under which property may be held, sold, or transmitted, maintain the rights of the individual against infringement or encroachment, punish for crime, and decide matters of dispute. This function is a necessary function, because by its exercise the state maintains peace and order within its boundaries.

III. Civil function.

The judiciary system provided for in the constitution of all states is the means by which this function is exercised. In federal states, such as the United States and Germany, a large part of the exercise of this function falls within the province of the component units, although the state maintains an independent system of courts for cases of specified kinds. In all states the judiciary system is so adjusted that the burden of handling the large number of trivial cases falls upon the local governments or organizations.

Extract from the Finance Act of 1894, providing for the Inheritance Tax in England

An Act to grant certain Duties of Customs and Inland Revenue, to alter other Duties, and to amend the Law relating to Customs and Inland Revenue, and to make other provision for the financial arrangements of the year. (31st July 1894.)

Most Gracious Sovereign,

We, Your Majesty's most dutiful and loyal subjects the Commons of the United Kingdom of Great Britain and Ireland in Parliament assembled, towards raising the necessary supplies to defray Your Majesty's public expenses, and making an addition to the public revenue, have freely and voluntarily resolved to give and grant unto Your Majesty the several duties herein-after mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted, and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Part I

estate duty

Grant of Estate Duty

Grant of estate duty.

1. In the case of every person dying after the commencement of this Part of this Act, there shall, save as herein-after expressly provided, be levied and paid, upon the principal value ascertained as herein-after provided of all property, real or personal, settled or not settled, which passes on the death of such person a duty, called "Estate duty," at the graduated rates herein-after mentioned, and the existing duties mentioned in the First Schedule to

this Act shall not be levied in respect of property chargeable with such Estate duty.

What property is deemed to pass.

2. (1) Property passing on the death of the deceased shall be deemed to include the property following, that is to say:

(*a*) Property of which the deceased was at the time of his death competent to dispose;

(*b*) Property in which the deceased or any other person had an interest ceasing on the death of the deceased, to the extent to which a benefit accrues or arises by the cesser of such interests; but exclusive of property the interest in which of the deceased or other person was only an interest as holder of an office, or recipient of the benefits of a charity, or as a corporation sole;

(*c*) Property which would be required on the death of the deceased to be included in an account under section thirty-eight of the Customs and Inland Revenue Act, 1881, as amended by section eleven of the Customs and Inland Revenue Act, 1889, if those sections were herein enacted and extended to real property as well as personal property, and the words "voluntary" and "voluntarily" and a reference to a "volunteer" were omitted therefrom; and

44 & 45 Vict. c. 12

52 & 53 Vict. c. 7.

(*d*) Any annuity or other interest purchased or provided by the deceased, either by himself alone or in concert or by the arrangement with any other person, to the extent of the beneficial interest accruing or arising by survivorship or otherwise on the death of the deceased.

(2) Property passing on the death of the deceased when situate out of the United Kingdom shall be included only, if, under the law in force before the passing of this Act, legacy or succession duty is payable in respect thereof, or would be so payable but for the relationship of the person to whom it passes. . . .

RATES OF ESTATE DUTY

The rates of Estate duty have been twice revised since 1894, once in the Finance Act of 1907, and again in the Finance Act of 1910. The rates in force at present, as stated in the Second

Schedule appended to Finance (1909–10) Act 1910, are as follows:

Where the Principal Value of the Estate			Estate Duty shall be Payable at the Rate Per Cent of
	£	£	
Exceeds	100 and does not exceed	500	1
Exceeds	500 and does not exceed	1,000	2
Exceeds	1,000 and does not exceed	5,000	3
Exceeds	5,000 and does not exceed	10,000	4
Exceeds	10,000 and does not exceed	20,000	5
Exceeds	20,000 and does not exceed	40,000	6
Exceeds	40,000 and does not exceed	70,000	7
Exceeds	70,000 and does not exceed	100,000	8
Exceeds	100,000 and does not exceed	150,000	9
Exceeds	150,000 and does not exceed	200,000	10
Exceeds	200,000 and does not exceed	400,000	11
Exceeds	400,000 and does not exceed	600,000	12
Exceeds	600,000 and does not exceed	800,000	13
Exceeds	800,000 and does not exceed	1,000,000	14
Exceeds	1,000,000		15

CHAPTER XII

UNNECESSARY OR OPTIONAL FUNCTIONS OF GOVERNMENT

The functions which have been discussed in the preceding pages are the functions which must necessarily be exercised to insure the existence of government; in addition to these, all governments of the modern era exercise many other functions in their attempt to promote the general welfare and prosperity of their people. These latter functions we may call the unnecessary or optional functions of government.

Unnecessary or optional functions.

No absolute uniformity with regard to the optional functions exercised by governments exists in practice to-day. Some governments own and manage their railroads, others do not; nearly all central governments manage the post office, but in the German Empire we find certain of the federal units having a postal service distinct from that of the Empire; some governments control and administer the telegraphs and telephones, others leave these to private ownership and management; within a single great state we may see differences in practice, as in the United States, where the Panama Canal is constructed by the central government, the so-called Barge Canal in New York by the commonwealth government, and the Cape Cod Canal by private capital. The only principles determining whether or not a government shall exercise certain of these optional functions are: (1) that a government should do for the public welfare those things which private capital would not naturally undertake, and (2) that a government should do those things which by its very nature it is better equipped to administer for the public welfare than is any private individual or group of individuals. How far these

Lack of uniformity: principles for the exercise of optional functions.

principles are applicable in concrete instances is to be determined by the statesmanship of those at the head of the separate governments.

In considering the present practice with regard to optional functions, we may, for convenience, distinguish five general classes: (1) Public Works; (2) Public Education; (3) Public Charity; (4) Industrial Regulations; and (5) Health and Safety Regulations.

Classes of optional functions.

I. Public Works

In the class of public works are to be included all those industries which have been removed by a government from private control and management to its own control and management in accordance with one or other of the principles stated above. As has been emphasized, governments differ in the extent to which they have considered these principles applicable; thus, for example, governments uniformly control the coinage and currency in their respective countries and establish and maintain lighthouses, but on the other hand governments differ radically in the extent to which they go in the control of railroads, water supplies, forests, etc.

Public works.

Modern governments uniformly control the coinage and issue of currency of various kinds. Nothing is more important to insure the stability of business relations than a fixed standard of exchange; and no individual or group of individuals is in a position to insure such a fixed standard. In minting its metal currency and in printing its paper currency to represent the precious metal stored in its vaults, and in punishing severely any attempt to counterfeit such currency or to reduce the value of such currency, a government is but guaranteeing to its citizens a fixed standard of exchange and thus facilitating the prosperity of the country.

1. Finances.

In addition to its function in coinage, certain governments, notably England and the United States, have established and now maintain savings banks (commonly called postal savings banks, because operated with the agency of the post office

department). These savings banks have offered to the people a place of deposit for their money which is as secure as the nation itself. Although the rates of interest are lower than in the privately managed savings banks, the absolute security of the principal against mismanagement or dishonesty has made such banks very popular.

Almost uniformly, modern governments control and manage the public postal service of their respective states. Such control and management is so familiar to us to-day that we are tempted to forget that not many generations ago the transmission of mail matter was in the hands of private business concerns. Governments have taken the postal service over on the ground that they, by their nature, are better fitted to insure the necessary safety and speed of delivery than are any private concerns.

2. Communications.

The same considerations that led governments to take over the postal service have led them in several notable instances to take over also the other important means of communication; namely, the telegraph and telephone service. A distinct advantage accrues to governments owning the telegraph and telephone service of the country, in that in case of war an immediate and absolutely effective censorship can be established over all the means of communication. At the present time Germany, France, Belgium, and England are among the important governments which own and manage this service. State ownership has been proposed in the United States, but the enormous expense involved in taking over the companies has been one chief argument against so doing.

Arguments similar to those used for government ownership and management of the postal, telegraph, and telephone services have led Germany into the government ownership and management of railroads. The government of Italy also owns and operates its railroads, but the considerations in that state leading to such governmental ownership were different from those in Germany. Owing to the peculiar shape of, and land conditions in, the Italian penin-

3. Transportation.

sula, privately owned railroads could not be profitable; and yet the industrial development of the country could only be increased by a system of railroads: for the public good, therefore, the Italian government maintains the financial burden of owning and operating the railroads in the state. The United States has been confronted by a somewhat similar condition in Alaska, and the government has at last been authorized to build, equip, and manage a railroad to tap certain great coal deposits in that territory. In this case, it was not believed beneficial to the public interest to allow private capitalists to control the freight facilities for these coal deposits.

In local governments, the municipal ownership of street transit lines has been widely favored and adopted. Thus many cities in England, Germany, Austria, Switzerland, Italy, and the United States have bought, or have built and are now operating, the municipal transit lines, on the principle that lower fares and better service result from municipal than from private ownership. In this country the question is still a live issue. To be weighed against the manifest advantages of honest and intelligent municipal ownership and operation is the prevalent distrust of political influence and graft.

A field in which the exercise of optional governmental functions is not questioned is the provision of public safeguards, such as lighthouses, buoys, beacons, and the like. All persons recognize that the safety of traffic by water depends upon the maintenance of such safeguards, and yet there would be no inducement to private concerns to establish and maintain them. Hence, the government is forwarding the general interest of the state in undertaking this work.

4. Public safeguards.

The building of dikes and levees is but a different application of this optional function for the general welfare.

From very early times the maintenance of thoroughfares has been an optional governmental function. The marvelous military roads of the Roman Empire still exist to bear witness of this fact. Governments (state or local) are still engaged in

building and maintaining roads, canals, bridges, and wharves, in dredging and deepening river channels and harbors, and in removing various obstructions to traffic, as derelicts in the sea paths. In these cases, again, we find a natural optional function of government, a function which all recognize as exercised for the public welfare, and yet a function which, if not exercised by the government, would probably not be exercised at all.

5. Thoroughfares.

The extension of governmental functions to include the conservation of the natural resources of the country, and to insure that the benefits to be derived from these natural resources shall be equitably distributed for the common good, has become a vital question in this country in recent years. The government has checked the ravages of private individuals and business concerns in time to preserve some natural resources of inestimable value. For example, the United States government owns and manages "in the interest of the whole people" (as stated in an official report) forests to the extent of 150,000,000 acres. These forests are protected against fire and are scientifically cut and replanted. In the future this enormous supply may play an important part in preventing a lumber famine. Again, the government has taken an active hand in insuring an equitable distribution of the water supply in certain semiarid regions of the west. For the purpose of irrigation it has built the enormous Roosevelt Dam in Arizona, another huge dam (the highest in the world) in Wyoming, the Lagune Dam holding the waters of the Colorado River, and an earthen dam in South Dakota. Under the Reclamation Act of 1902, Congress provided for the above engineering works, and for more to follow.

6. Natural resources.

Governmental ownership and operation of supply plants, as of water, gas, or electricity, is for the most part confined to local governments. As in the case of street transit lines, municipal ownership of the water, gas, and electricity supplies has been extensively adopted in cities of modern states. The arguments in favor of such ownership

7. Supply plants.

and operation, provided the operation is honest and intelligent, are irrefutable, but the suspicion that municipal control would infuse the worst elements of party politics and graft into the management of these public necessities has led many serious thinkers to take their stand in opposition.

II. Public Education

The second of the five general classes of optional functions is composed of those functions having to do with public education.

Public education. It may safely be said that in no line has government done so much as in this during recent generations. With the introduction and steady increase in democratic institutions, governments have realized that the education of the people was their best insurance for continued existence.

The most obvious manifestation of the exercise of this optional function is the public school system established and maintained in all progressive governments to-day.

1. Public school system. Where children of the poorer classes were not expected to receive any education in many of the foremost states a century ago, free schools are now provided and stringent truancy laws enforced. In the money appropriated for education, and in the number and quality of the schools provided, the United States excels any other great state.

For educational purposes also modern governments establish and maintain museums, art galleries, libraries, botanical and zoölogical gardens, and parks. Both national and local governments exercise these functions.

2. Museums, art galleries, etc. The British Museum in London, the Louvre in Paris, and the Smithsonian Institution in Washington are examples of what free educational opportunities the central government offers to its people.

Of a different but equally valuable kind for the education of the people are the scientific bureaus, experiment stations, and the like established and maintained by the government.

The weather bureau, the hydrographic office, and the astronomical observatories are examples of such bureaus established not only to safeguard the people, but to gather and disseminate information of general interest and value.

3. Scientific establishments.

A few striking statistics of what a single branch of government does in a scientific way will illustrate the value of the government's work to the country at large. The department of agriculture in the United States stands ready to help the farmer in whatever difficulty may beset him. It will show him for what crops his soil is suited and how to grow those crops; what animals to breed and how to take care of them. It has introduced into this country sorghum, durum wheat, alfalfa, the navel orange, Japanese rice and bamboo, the Corsican citron, the Indian mango, Spanish almonds, French prunes, Chinese mustard, and Egyptian cotton. It establishes subsidiary bureaus to report the condition of imported seeds, grains, and the like. In its laboratories it studies the best methods of fighting the numerous pests and diseases which baffle the farmer, as the boll weevil, the brown-tailed moth, the tent caterpillar, the little-peach disease and the peach-blight, the apple bitter-rot, etc. Such work as this appeals in a practical way to every citizen of the state.

III. Public Charity

The third of the general classes of optional functions is composed of those functions having to do with public charity. In the exercise of this function, the government is doing something which the heart of each man approves, yet which, were it not done by the government, would be less efficiently done by individuals. It is true that in recent years men of large fortunes have devoted huge sums to public charitable and educational uses, as by the endowment of research laboratories, hospitals, libraries, and colleges. The governments, however, in no degree relax their efforts to take

Public charity.

care of the poor and helpless. The soldiers' homes established and maintained by the central government, the numerous insane asylums, almshouses, and hospitals, either of the central or local governments, and the various corrective institutions, all bear witness to the exercise of public charity by the government.

Public charity insurance.

In comparatively recent years a notable endeavor to help poor people to help themselves, or at least to assure public charity to the really deserving, has resulted in the introduction of various forms of state insurance.

Germany has in her laws the most complete system of workingman's insurance in the world to-day. At present, her laws provide for compulsory insurance on the part of the workman against accident, sickness, or old age. In accident insurance, the workman in case of accident receives in benefits medical attendance and weekly payments based on his earned rate of wages, and in case of death a burial benefit and a pension to those dependent on him. In sickness insurance, which is also compulsory, he receives in benefits a weekly sum based on his earned rate of wages, medical or hospital treatment if necessary, and in case of death a funeral benefit twenty times his weekly wages. Old age insurance, also compulsory, entitles a workman at the age of 70, who has paid the compulsory contributions for not less than 1200 weeks, to receive a pension for the remainder of his life.

In 1908 England passed an old age pension law, differing markedly from the insurance system in Germany. Under the provisions of this act, no contributions are exacted from the recipient of the benefits. Any person upon reaching the age of 70, who has been a resident 20 years preceding his application, can show that he has an annual income of less than $157.50, can prove that he has been industrious, has not been convicted of a criminal offense, may claim a weekly pension of not more than $1.25. The amount of the pension (about $40,000,000 in 1909) is taken from the general funds derived from taxation.

In France, Denmark, and the Australian countries some form of state insurance has also been introduced. In the United States the idea has not met with favor. The commonwealth of Massachusetts is the only government which has passed an act even remotely suggesting state insurance; namely, the act (1907) which allowed savings banks to sell life and old age insurance. The purpose of this act was to keep down the cost of insurance administration by associating the insurance with the banks and by providing for no agents or solicitors. The amount of insurance contracted for under the provisions of this act does not lead one to believe that it has accomplished its primary purpose of encouraging workingmen to insure.

Regulative Functions

The two remaining classes of optional functions differ in character from those discussed above in that they are mainly regulative in nature. They consist in an attempt by the government to benefit the whole people by the enactment of laws regulating their actions under stated circumstances rather than (as in the previous classes of functions) in the direct assumption by the government of a business or an institution. These regulative functions are especially obnoxious to the individualist, to the believer in the *laissez-faire* theory. In whatever state they are exercised, insistent criticism of the government for alleged encroachment on individual rights is made. The defense of the government is, stated simply, that it is acting in good faith for the greatest good of the greatest number of its citizens.

IV. Industrial Regulation

The regulation of industrial conditions is the class of regulation which has aroused most open and bitter criticism. Although certain industrial conditions have been regulated by governments from time immemorial (as foreign trade and commerce), the wholesale extension of gov- **Industrial regulation.**

ernmental regulation to such things as the amalgamation of competing business concerns, the prices charged by common carriers (as the railroads), the age, hours of labor, conditions in factories, etc., is fiercely resented by interested parties.

For convenience in treatment, the regulative functions of government concerned with industrial conditions will be discussed under the following heads: (1) Financial; (2) Commercial; (3) Business or corporation; (4) Labor.

1. Financial.

The institutions which together compose the financial system in a state are known as *banks*. So important has their influence in the economic life and prosperity of the state become that now hardly any one questions the advantage of governmental regulation over them. To understand the nature of this regulation, a general notion of what a bank is and does must be given.

A bank is an establishment for the custody, loan, exchange, or issue of money. It receives deposits for safekeeping subject to draft by the depositor; it invests or lends for interest the money intrusted to it and thus earns a certain amount over and above the expense of conducting the establishment; and in certain cases it has the privilege of issuing its own bank notes to be used as currency. In providing a secure place for the deposit of money and in being ready at any time to pay out such money when required by the depositor, and in honoring checks of the depositor drawn to the credit of another person and transferring the funds from the depositor to that designated person, a bank is an inestimable convenience to its community. In providing money for loan in response to legitimate private needs and to legitimate business enterprises, a bank may do much toward increasing the general prosperity of the community. In issuing its bank notes (which are nothing more or less than promises to pay a stipulated amount on demand), a bank may increase the flexibility of the whole system by providing ample currency when currency is urgently needed and by taking in its currency when the need is slight. Thus in all its functions a bank *may* be of great benefit to its community,

but the harm to its community if a bank business is not properly conducted is correspondingly great. For if a bank does not safeguard the deposits of the people, the bank is not fulfilling one of its primary and most important purposes, and ultimately must fail. And if a bank invests its depositors' funds in poor securities, or lends these funds to borrowers who when the time comes to repay are unable to meet their obligations, or has so much of its depositors' funds invested in things upon which it cannot realize quickly that it is unable upon the demand of any considerable number of its depositors to pay them back their money — if a bank commits any of these faults, it is certain to fail. And again, if a bank is allowed to issue its bank notes beyond its ability to pay, ultimately such bank notes will constitute an overwhelming liability under which the bank must fail.

The failure of a bank, great or small, is a public calamity. The depositors are left without funds, the confidence of the people is undermined, and the radiations from a single bank failure may cause the failure of a large number of individuals and business firms. The stability of the banks and of the whole banking system is absolutely essential to the natural course of business and community life. It is in the realization of the dangers to the community in bad banking that the government exercises its regulative power to insure good banking.

Regulation commonly takes the following forms: (*a*) Requirement of incorporation; (*b*) Requirement of a stipulated minimum of capital and surplus; (*c*) Liability of stockholders; (*d*) Regulation of investments; (*e*) Regulation of reserves; (*f*) Regulation of note issues; (*g*) Public inspection and supervision.

(*a*) In view of the manifest importance of the banking business to the community, no one should be permitted to engage in it without authority from the government. Hence arises the requirement of incorporation, either by a special charter or in accordance with the provisions of a general banking law. Such special charter or general law states the conditions under

which the bank shall conduct its business. Were incorporation not required, it would be impossible for the government to exercise the necessary supervision over the banks.

(*b*) The requirement of a certain minimum capital and surplus is imposed by the government in its endeavor to secure to depositors in a bank the safety of their deposits. The capital is an amount directly contributed by the stockholders or proprietors of the bank, and the surplus is an additional amount earned and set aside from the profits of the business. In case a bank fails, its capital and surplus may be used to pay the depositors and other creditors.

(*c*) In some states, stockholders in banks may be assessed for an amount equal to their holdings in case the bank fails with assets insufficient to pay the depositors. In this provision, again, the attempt is made to secure above everything else the safety of the depositors' funds.

(*d*) Governmental regulation of a bank's investments presents a difficult problem. The success of a bank wholly depends upon these investments, and yet it is not feasible to regulate these to any considerable extent. The care and wisdom of the officers and directors of a bank must be trusted. In some commonwealths of the United States the banking officials issue lists of securities which are legal investment for certain classes of banks within the commonwealth; the national banks of the United States are restricted by a general law in the matter of real estate investments; all the banks are subject to periodical examination by governmental commissioners who determine the condition of the bank.

(*e*) In most states no legal requirements with regard to the reserves exist. The United States, however, and its commonwealths uniformly require a certain amount of reserve funds to be kept available, the amount varying from 15 per cent to 25 per cent.

(*f*) Restrictions upon bank-note issues are most necessary, for if bank notes are unsecured by assets of equal value, disaster is sure to follow. In England, the Bank of England may issue

£18,450,000 in bank notes upon the deposit of securities to that value, and may issue above that amount only by the deposit of bullion to equal value. In Germany, banks having the right to issue bank notes are assigned a fixed quota to be secured by the deposit of one third cash and the remainder in first-class bills of exchange. In France, a limit is set by law to the amount of issue by the Bank of France. In the United States, national banks (which are the only ones privileged to issue bank notes) must deposit government bonds with the comptroller of the currency to secure their issues, and then the national government sends the bank notes to the bank and guarantees the payment. Such national banks are not allowed to issue bank notes to an amount greater than their paid-in capital stock. These various regulations will illustrate the care with which governments attempt to insure the safety of the bank-note issues.

(*g*) Lastly, periodical examination of the condition of the banks by governmental officials is required by law, that any evidences of unsound banking may be detected. In addition to this, a sworn statement of each bank's condition is required to be published at certain intervals. The accounts of the Bank of England are regularly published in the English financial journals; banks in Germany must make weekly reports; the Bank of France has its balance sheet published each Friday, and must furnish the government with a full statement of its condition and operations each six months; national banks in the United States are called upon five times annually by the comptroller of the currency for reports, and these reports are published; banks in the commonwealths are required by the laws of the commonwealths to issue periodical statements of condition.

The Federal Reserve Act, 1914.

As this is being written, the Congress of the United States has passed, and the President has approved, certain legislation for the reform of the banking system in this country which illustrates well how far the government is willing to go in the exercise of its optional functions. Under the provisions of this legislation, a federal reserve board

of seven members is established, and the country is to be divided into from eight to twelve federal reserve districts, each containing a federal reserve bank with branch banks. Each federal reserve bank is the bank of bankers: its capital stock (minimum $4,000,000) is to be subscribed by the banks of its district; its government is in a board of nine directors, of whom six are elected by the member banks; it can accept no deposits from any persons, concerns, or institutions except banks and the United States; it conducts no business except with banks; and its dividends are limited to six per cent, any excess being equally apportioned to the surplus and to the government. The deposits are to be made up of portions of the required reserve of the banks of the district in the system, of deposits of funds of the national government, and (for exchange purposes only) funds transferred from other federal reserve banks. The federal reserve banks are, under stipulated conditions, to be the issuers of bank notes hereafter. The federal reserve banks are allowed to discount for any member bank its notes, drafts, or bills of exchange arising out of actual commercial transactions, and special provision is made to allow notes and the like secured by the agricultural products or other goods or merchandise to be discounted by the federal reserve bank for its member banks. Provision is also made for one reserve district to get the advantage of an excess of funds in other reserve districts. Briefly, the proposed system seems to establish a chain of money reservoirs with connecting pipes through which funds may pass from one part of the country to another as need occurs, with provision that from each reservoir funds may be sprayed out upon call to the various member banks of the district.

2. Regulation of commerce.

The next class of industrial regulation is the regulation of commerce. The governmental regulation of commerce is not new; in the form of tariffs and tolls it has existed since ancient times. The history of commerce in any state is inextricably bound up with the history of the tariff. The governmental tariffs on grain in England

(the "corn laws") of the early nineteenth century, and the English navigation laws intended to insure supremacy in the oceanic carrying trade to the English merchant marine, are striking examples of the governmental regulation of commerce.

In the United States the government has exercised this optional function to an extraordinary degree in the matter of interstate commerce. By a law of Feb. 4, 1887, as amended in subsequent acts down to 1910, an Interstate Commerce Commission of seven members appointed by the President has very extensive inquisitorial powers over the affairs of all common carriers between different commonwealths. Its chief duties are to prevent unjust discrimination by railroads among various shippers and to secure reasonable and just transportation charges. By a law of June 29, 1906 (Hepburn Act), the jurisdiction of the commission was extended to pipe lines conveying oil or any other commodity (except water or natural gas) and to express companies and sleeping car companies, and strict provision was made for the publication of rates, the supervision of accounts and records, etc. To cap the whole, a special Commerce Court was created by the Act of June 18, 1910, to be composed of five judges and to have exclusive jurisdiction over all cases arising under the Interstate Commerce Act, appeal from its decisions going directly to the Supreme Court of the United States. The powers granted to the Interstate Commerce Commission are among those powers most bitterly criticised by the opponents of the extension of governmental functions.

United States: Interstate Commerce Commission and Commerce Court.

It must not be thought that governments have always used their optional functions affecting commerce for the purpose of suppression. In the United States huge grants of land were made to railroads in former times to encourage them to extend their lines and develop the country; in England and Germany, at present, subsidies in one form or another are bestowed by the government upon certain steamship lines to

Aid to commerce and commercial business by governmental regulation.

encourage the increase of the merchant marine; and in the United States the government has at various times imposed protective tariffs to foster the beginnings and growth of home industries of certain types.

A peculiar form of the extension of governmental functions over commerce is to be observed in so-called "sumptuary" regulations and fiscal monopolies. Sumptuary regulations are regulations imposed with the primary purpose of preventing extravagance on the part of the people. Thus Switzerland monopolizes the manufacture of alcohol and certain alcoholic liquors and Japan monopolizes the commerce in opium in Formosa. In the latter case, the government intends, probably, to regulate the traffic to the point of suppression. Fiscal monopolies are enterprises monopolized by the state primarily for the revenue to be derived therefrom. Thus France monopolizes the manufacture of matches, cigarettes, and tobacco in general; Prussia, Austria, Italy, and Spain maintain public lotteries; and Japan has created fiscal monopolies in many articles of general consumption.

The class of industrial regulation just discussed is closely akin to the next class, the class concerned with the regulation of business corporations. In this country, especially, the "trust" problem has been a live issue in recent times, and each step in the extension of governmental regulation has been fiercely fought.

3. Regulation of business.

A trust is an organization or combination of a number of firms or corporations engaged in the same line of business, such organization or combination being formed primarily to control the supply and price of its products. The trust may itself be a corporation, or it may consist of a number of persons or business corporations united by mutual contracts or agreements. The trust is, it is contended by many, a natural evolution of business. The waste due to keen competition among a number of business firms in the same line of business is only to be eliminated by the combination of these firms into one or by

The "trusts" in the United States.

their operation under a mutual agreement with respect to territory, selling prices, etc. When the great trusts began to be formed in this country, they had many defenders; but the advantage that huge business combinations have taken of their size and money resources to stifle legitimate competition and thus create for themselves an absolute monopoly in production has caused a general revulsion of feeling. In general, it has become evident that to allow any combination of individuals to control the output of any necessity for a hundred millions of people is to give to that combination more power than it ought to have. Such a situation tends to result in a deterioration of product and a rise in price. Individual initiative for the invention of new and more efficient machinery required in such a business is stifled. The prices offered for the raw material used in the business may, where a single buyer may dictate its own figures, fall to almost ruinous levels. Stock may be issued to an amount far beyond the value of the combined plants ("stock watering") and figures may be juggled to deceive the stockholders. An unhealthy moral tone may result from continued business deception. A number of such combinations, controlling capital to a staggering amount, may easily exercise a control over the government itself.

In view of the possibilities and the facts, important legislation has been passed both by the federal government and by the commonwealth governments to check the formation of trusts and to accomplish the dissolution of such as were already formed. The most important of these laws is that known as the Sherman Anti-trust Act of 1890, by which, in the words of section 1, "every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract, or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding $5000, or by

imprisonment not exceeding one year, or by both said punishments, in the discretion of the court." In a succeeding section the act provides that any person injured by such a combination in restraint of interstate trade may recover threefold damages, with costs. Under the provisions of this Sherman Act, the government has actually caused the dissolution of two great corporations on the ground that they were trusts (the Standard Oil Company and the American Tobacco Company) and is at the present time carrying on cases in the courts against various others. The decisions of the Supreme Court in test cases will operate to allow efficiently managed and non-monopolistic trusts to exist, for great emphasis is laid on the "rule of reason" in construing the words *restraint of trade* in the Sherman Act. Apparently in the future the character of the acts of a combination rather than the form of organization will determine whether or not it is illegal.

Trusts in foreign countries.

The aggregation of business concerns into trusts is not confined to this country; in France, Austria, and Germany trusts in one form or another abound. In England the trusts have little influence, owing to the free-trade principles, which allow the unrestricted competition of foreign producers in the English markets. In Austria and Germany it is probable that trusts include as many industries and control as large a proportion of manufactures as they do in the United States. These industrial combinations are not checked by law in foreign countries to the extent they are in this country. France has a law prohibiting combinations of the chief producers with a view to controlling prices, but the law is not now rigorously enforced and there are many such combinations. A somewhat similar situation exists in Austria, where, in spite of a law to the contrary, many great combinations exercise a marked control over prices and output. In Germany price agreements are legal, but if the prices fixed are unreasonable, the trust is liable to suit in the courts for extortion.

The last of the classes of industrial regulation is the govern-

mental regulation of labor. Modern governments have gone to extraordinary lengths to protect the laborers of various types and in various kinds of work.

4. Regulation of labor.

This regulation has been necessitated chiefly by the wholesale introduction of machinery and its results upon industrial conditions. Where communities formerly were rural and where each laborer owned his own means of production, suddenly huge factories housing the means of production for thousands sprang up and created cities. The home spinning wheel could not compete with the machine, and the laborer was forced to go into the factory and use the capitalist's machine to earn a living. All the power of economic life or death was thus suddenly delivered into the hands of the capitalists. They were careless of their employees' lives, for the empty places were soon filled. All the evils of child labor, too long hours of labor, unsanitary factories, improper protection against accidents, were allowed to flourish.

It required a generation of people enduring these conditions to arouse the public conscience. After conscience was once aroused and trustworthy investigations had revealed the true state of affairs, remedial legislation was soon passed. In England, where conditions were at one time the worst, there is now a complete set of laws securing the health and safety of the laborers and providing for periodical official inspections of the places used by the laborers. In other countries also, as France, Germany, and the United States, the government has extended its functions in the endeavor to secure the advantage of the laboring classes.

These protective labor laws are not only intended to protect the dependent laborer from the capitalist, but also to protect the laborer from the results of his own ignorance or carelessness. The ignorant laborer will allow his small children to work in the factory for the pittance that their wages add to his income; the government will not (in most states) allow children under a certain age to be employed except under the most favorable conditions. The ignorant or careless laborer

will accept employment involving great risk, either without knowledge of the risk or with the belief that he will be lucky enough to escape. Here again the government intervenes with special laws covering employment in dangerous trades and with legislation placing the liability for disease, accident, or death upon the employer.

V. Public Safety Regulation

Public safety regulation.

The fifth great class of optional functions includes the various regulations which government enforces in its effort to conserve the public health and safety. In this present day, when the causes of the spread of disease are better understood than ever before, government exercises a control over sanitary conditions which it never attempted to exercise in previous eras; and now, with the spread of democracy, the life of each individual, however lowly, has its value, which government recognizes by a multitude of regulations intended to insure safety.

Sanitary regulations.

The regulations with which we are all familiar are those which impose a quarantine upon persons suffering from a contagious disease and those which require vaccination or inoculation as a preventive to certain diseases. The national government provides that each ship that comes to its shores shall be inspected for the presence of contagious disease. In this country the federal government provides for the physical examination of all immigrants before they are allowed to land. Usually the local governments attend to the quarantine of persons with contagious disease in their locality. Vaccination is commonly a requirement of the local government in communities, and is rigidly enforced among school children.

Regulation of morals.

Side by side with the physical health, government tries to protect the moral health of its people by the regulation of pictures, posters, and printed matter, and by strict supervision of theaters, dance halls, and the like. Such regulation is commonly undertaken by the local government.

Another way in which the government extends its functions to safeguard health and life is by inspection of certain businesses and professions which closely affect the people. For example, the sources of a community's milk supply come under government supervision; the businesses of baking, plumbing, and slaughtering are carried on under regulations imposed by the government. Doctors and dentists can secure the right to practice only by undergoing a governmental examination. Even the chauffeur must prove that he knows how to handle an automobile. In each case the extension of governmental functions is warranted by the fact that thus disease or accident may be avoided and lives saved.

Regulation of businesses and professions.

In general, the people in the foremost countries have become accustomed to the interference of the government in their affairs, and tend to acknowledge that such interference is justifiable where it can be shown that the people as a whole may be benefited. People trust their own government more as they have come to wield a greater and greater influence over it. In the United States to-day, the mass of the people seem to desire an extension of the optional functions of government rather than the contraction of any of such functions which the government has already undertaken.

1

English Old Age Pension Law

An Act to provide for Old Age Pensions

(1st August, 1908)

Be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Right to receive old age pension

1. (1) Every person in whose case the conditions laid down by this Act for the receipt of an old age pension (in this Act referred to as statutory conditions) are fulfilled, shall be entitled to receive such a pension under this Act so long as those conditions continue to be fulfilled, and so long as he is not disqualified under this Act for the receipt of the pension.

(2) An old age pension under this Act shall be at the rate set forth in the schedule to this Act.

(3) The sums required for the payment of old age pensions under this Act shall be paid out of moneys provided by Parliament.

(4) The receipt of an old age pension under this Act shall not deprive the pensioner of any franchise, right, or privilege or subject him to any disability.

Statutory conditions for receipt of old age pension.

2. The statutory conditions for the receipt of an old age pension by any person are —

(1) The person must have attained the age of seventy:

(2) The person must satisfy the pension authorities that for at least twenty years up to the date of the receipt of any sum on account of a pension he has been a British subject, and has had his residence, as defined by regulations under this Act, in the United Kingdom:

(3) The person must satisfy the pension authorities that his yearly means as calculated under this Act do not exceed thirty-one pounds ten shillings.

Disqualification for old age pension.

3. (1) A person shall be disqualified for receiving or continuing to receive an old age pension under this Act, notwithstanding the fulfilment of the statutory conditions —

(*a*) While he is in receipt of any poor relief (other than relief excepted under this provision), and, until the thirty-first day of December nineteen hundred and ten unless Parliament otherwise determines, if he has at any time since the first day of January nineteen hundred and eight received, or hereafter receives, any such relief: Provided that for the purposes of this provision —

(*i*) any medical or surgical assistance (including food or comforts) supplied by or on the recommendation of a medical officer; or

(*ii*) any relief given to any person by means of the maintenance of any dependant of that person in any lunatic asylum, infirmary, or hospital, or the payment of any expenses of the burial of a dependant; or

(*iii*) any relief (other than medical or surgical assistance, or relief herein-before specifically exempted) which by law is expressly declared not to be a disqualification for registration as a parliamentary elector, or a reason for depriving any person of any franchise, right, or privilege; shall not be considered as poor relief:

(*b*) If, before he becomes entitled to a pension, he has habitually failed to work according to his ability, opportunity, and need, for the maintenance or benefit of himself and those legally dependent upon him:

Provided that a person shall not be disqualified under this paragraph if he has continuously for ten years up to attaining the age of sixty, by means of payments to friendly, provident, or other societies, or trade unions, or other approved steps, made such provision against old age, sickness, infirmity, or want or loss of employment as may be recognized as proper provision for the purpose by regulations under

this Act, and any such provision, when made by the husband in the case of a married couple living together, shall as respects any right of the wife to a pension, be treated as provision made by the wife as well as by the husband:

53 & 54 Vict. c. 5.

(*c*) While he is detained in any asylum within the meaning of the Lunacy Act, 1890, or while he is being maintained in any place as a pauper or criminal lunatic:

(*d*) During the continuance of any period of disqualification arising or imposed in pursuance of this section in consequence of conviction for an offence.

(2) Where a person has been before the passing of this Act, or is after the passing of this Act, convicted of any offence, and ordered to be imprisoned without the option of a fine or to suffer any greater punishment, he shall be disqualified for receiving or continuing to receive an old age pension under this Act while he is detained in prison in consequence of the order, and for a further period of ten years after the date on which he is released from prison.

(3) Where a person of sixty years of age or upwards having been convicted before any court is liable to have a detention order made against him under the Inebriates Act, 1898, and is not necessarily, by virtue of the provisions of this Act, disqualified for receiving or continuing to receive an old age pension under this Act, the court may, if they think fit, order that the person convicted be so disqualified for such period, not exceeding ten years, as the court direct.

61 & 62 Vict. c. 60.

* * * * * * *

Commencement and short title.

12. (1) A person shall not be entitled to the receipt of an old age pension under this Act until the first day of January nineteen hundred and nine and no such pension shall begin to accrue until that day.

(2) This Act may be cited as the Old Age Pensions Act, 1908.

Schedule

Means of Pensioner	Rate of Pension per Week
	s. *d.*
Where the yearly means of the pensioner as calculated under this Act —	
Do not exceed 21*l.*	5 0
Exceed 21*l.*, but do not exceed 23*l.* 12*s.* 6*d.*	4 0
Exceed 23*l.* 12*s.* 6*d.*, but do not exceed 26*l.* 5*s.*	3 0
Exceed 26*l.* 5*s.*, but do not exceed 28*l.* 17*s.* 6*d.*	2 0
Exceed 28*l.* 17*s.* 6*d.*, but do not exceed 31*l.* 10*s.*	1 0
Exceed 31*l.* 10*s.*	No pension

2

The Sherman Anti-trust Act

Chap. 647. — An act to protect trade and commerce against unlawful restraints and monopolies.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

Trusts, etc., in the States, in restraint of trade, etc., illegal.

Section 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

Persons combining, guilty of misdemeanor.

Penalty.

Sec. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

Persons attempting to monopolize, etc., guilty of misdemeanor.

Penalty.

Trusts, etc., in Territories or District of Columbia illegal.

SEC. 3. Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is hereby declared illegal. Every person who shall make any such contract or engage in any such combination, or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

Persons engaged therein guilty of misdemeanor.

Penalty.

Jurisdiction of United States circuit courts.

Prosecuting officers.

Procedure.

SEC. 4. The several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney-General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

Hearing, etc.

Temporary restraining order, etc.

Process.

SEC. 5. Whenever it shall appear to the court before which any proceeding under section four of this act may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpœnas to that end may be served in any district by the marshal thereof.

Trusts, etc., property in

SEC. 6. Any property owned under any contract or by any combination, or pursuant to any conspir-

acy (and being the subject thereof) mentioned in section one of this act, and being in the course of transportation from one State to another, or to a foreign country, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law.

transit.
Ante, p. 309.

Forfeiture, seizure, and condemnation.

SEC. 7. Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any circuit court of the United States, in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee.

Damages.

Litigation.

Recovery.

SEC. 8. That the word "person," or "persons," wherever used in this act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

"Person," or "persons," defined.

Approved, July 2, 1890.

(United States Statutes at Large, 51st Congress, 1889–1891.)

3

SUMMARY OF PARAGRAPHS IN, AND EXTRACTS FROM, THE ACT TO REGULATE COMMERCE, KNOWN AS THE INTERSTATE COMMERCE ACT

SECTION 1. [Summary. Provides that the provisions of the act apply (1) to corporations or persons engaged in the transportation of oil or other commodity except water and gas by pipe lines, (2) to telegraph, telephone, and cable companies, (3) to railroads, (4) to express companies and sleeping car companies, in so far as any of these classes of carriers engage in an interstate business: and provides that such carriers furnish service at just and reasonable rates.]

SEC. 2. That if any common carrier subject to the provisions of this act shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this act, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful.

SEC. 3. That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic in any respect, whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Every common carrier subject to the provisions of this act shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic, between their respective lines, and for the receiving, forwarding, and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines; but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business.

SEC. 4. [Summary. Provides that it shall be unlawful to charge more for a "short haul" than for a long haul, except in special cases approved by Interstate Commerce Commission.]

SEC. 5. That it shall be unlawful for any common carrier subject to the provisions of this act to enter into any contract, agreement, or combination with any other common carrier or carriers for the pooling of freights of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof; and in any case of an agreement for the pooling of freights as aforesaid, each day of its continuance shall be deemed a separate offense.

SEC. 6. [Summary. That the common carriers shall file with the Interstate Commerce Commission and make public their schedules showing all the rates, fares, and charges for transportation, that rates shall not be changed without due notice to the commission, and that in time of war or threatened war preference and precedence shall be given to military needs.]

SEC. 7. [Summary. That it shall be unlawful to combine to prevent continuous shipment.]

SEC. 8. [Summary. That common carriers are liable to damages and costs in case of failure to observe the provisions of the law.]

SEC. 9. [Summary. That persons may complain to the Interstate Commerce Commission or bring suit in any district or circuit court in case they feel damaged by any common carrier.]

SEC. 10. [Summary. Prescribes the penalties for violations of the act.]

SEC. 11. That a commission is hereby created and established to be known as the Interstate Commerce Commission, which shall be composed of five Commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate. The Commissioners first appointed under this Act shall continue in office for the term of two, three, four, five, and six years, respectively, from the first day of January, Anno Domini eighteen hundred and eighty-seven, the term of each to be designated by the President; but their successors shall be appointed for terms of six years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired time of the Commissioner whom he shall succeed. Any Commissioner may be removed by the President for inefficiency, neglect of duty or malfeasance in office. Not more than three of the Commissioners shall be appointed from the same political party. No person in the employ of or holding any official relation to any common carrier subject to the provisions of this act, or owning stock or bonds thereof, or who is in any manner pecuniarily interested therein, shall enter upon the duties of or hold such office. Said Commissioners shall not engage in any other business, vocation or employment. No vacancy in the Commission shall impair the right of the remaining Commissioners to exercise all the powers of the Commission.

NOTE. — By subsequent legislation (June 29, 1906) the Commission was enlarged to seven members, the terms were made seven years, and the pay was raised to $10,000 each.

SEC. 12. That the Commission hereby created shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this Act, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from such common carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created; and the Commission is hereby authorized and required to execute and enforce the provisions of this Act; and, upon the request of the Commission, it shall be the duty of any district attorney of the United States to whom the Commission may apply to institute in the proper court and to prosecute under the direction of the Attorney-General of the United States all necessary proceedings for the enforcement of the provisions of this Act and for the punishment of all violations thereof, and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States; and for the purposes of this Act the Commission shall have power to require, by subpœna, the attendance and testimony of witnesses and the production of all books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation. . . .

SEC. 13. [Summary. Provides for the manner of making complaints to the Commission and the manner in which complaints are to be served upon the carriers.]

SEC. 14. [Summary. Provides for reports to be made by the Commission.]

SEC. 15. That whenever, after full hearing upon a complaint made as provided in section thirteen of this Act, or after full hearing under an order for investigation and hearing made by the Commission on its own initiative (either in extension of any pending complaint or without any complaint whatever) the Commission shall be of opinion that any individual or joint rates or charges whatsoever demanded, charged, or collected by any common carrier or carriers subject to the provisions of this Act, for the transportation of persons or property or for the transmission of messages by telegraph or telephone as defined in the first section of this Act, or that any individual or joint classifications, regulations, or practices whatsoever of such carrier or carriers subject to the provisions of this Act are unjust or unreasonable or unjustly discriminatory, or unduly preferential or prejudicial or otherwise in violation of any of

the provisions of this Act, the Commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate or rates, charge or charges, to be thereafter observed in such case as the maximum to be charged, and what individual or joint classification, regulation, or practice is just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds the same to exist, and shall not thereafter publish, demand, or collect any rate or charge for such transportation or transmission in excess of the maximum rate or charge so prescribed and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed. All orders of the Commission, except orders for the payment of money, shall take effect within such reasonable time, not less than thirty days, and shall continue in force for such period of time, not exceeding two years, as shall be prescribed in the order of the Commission, unless the same shall be suspended or modified or set aside by the Commission, or be suspended or set aside by a court of competent jurisdiction. Whenever the carrier or carriers, in obedience to such order of the Commission or otherwise, in respect to joint rates, fares, or charges, shall fail to agree among themselves upon the apportionment or division thereof the Commission may, after hearing, make a supplemental order prescribing the just and reasonable proportion of such joint rate to be received by each carrier party thereto, which order shall take effect as a part of the original order.

Whenever there shall be filed with the Commission any schedule stating a new individual or joint rate, fare, or charge, or any new individual or joint classification, or any new individual or joint regulation or practice affecting any rate, fare, or charge, the Commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders, without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the propriety of such rate, fare, charge, classification, regulation, or practice; and pending such hearing and the decision thereon the Commission upon filing with such schedule and delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension may suspend the operation of such schedule and defer the use of such rate, fare,

charge, classification, regulation, or practice, but not for a longer period than one hundred and twenty days beyond the time when such rate, fare, charge, classification, regulation, or practice would otherwise go into effect; and after full hearing, whether completed before or after the rate, fare, charge, classification, regulation, or practice goes into effect, the Commission may make such order in reference to such rate, fare, charge, classification, regulation, or practice as would be proper in a proceeding initiated after the rate, fare, charge, classification, regulation, or practice had become effective: *Provided*, That if any such hearing cannot be concluded within the period of suspension, as above stated, the Interstate Commerce Commission may, in its discretion, extend the time of suspension for a further period not exceeding six months. At any hearing involving a rate increased after January first, nineteen hundred and ten, or of a rate sought to be increased after the passage of this Act, the burden of proof to show that the increased rate or proposed increased rate is just and reasonable shall be upon the common carrier, and the Commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible.

The Commission may also, after hearing, on a complaint or upon its own initiative without complaint, establish through routes and joint classifications, and may establish joint rates as the maximum to be charged and may prescribe the division of such rates as hereinbefore provided and the terms and conditions under which such through routes shall be operated, whenever the carriers themselves shall have refused or neglected to establish voluntarily such through routes or joint classifications or joint rates; and this provision shall apply when one of the connecting carriers is a water line. The Commission shall not, however, establish any through route, classification, or rate between street electric passenger railways not engaged in the general business of transporting freight in addition to their passenger and express business and railroads of a different character, nor shall the Commission have the right to establish any route, classification, rate, fare, or charge when the transportation is wholly by water, and any transportation by water affected by this Act shall be subject to the laws and regulations applicable to transportation by water.

And in establishing such through route, the commission shall not require any company, without its consent, to embrace

in such route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith which lies between the termini of such proposed through route, unless to do so would make such through route unreasonably long as compared with another practicable through route which could otherwise be established.

In all cases where at the time of delivery of property to any railroad corporation being a common carrier for transportation subject to the provisions of this Act to any point of destination, between which and the point of such delivery for shipment two or more through routes and through rates shall have been established as in this Act provided to which through routes and through rates such carrier is a party, the person, firm, or corporation making such shipment, subject to such reasonable exceptions and regulations as the Interstate Commerce Commission shall from time to time prescribe, shall have the right to designate in writing by which of such through routes such property shall be transported to destination, and it shall thereupon be the duty of the initial carrier to route said property and issue a through bill of lading therefor as so directed, and to transport said property over its own line or lines and deliver the same to a connecting line or lines according to such through route, and it shall be the duty of each of said connecting carriers to receive said property and transport it over the same line or lines and deliver the same to the next succeeding carrier or consignee according to the routing instructions in said bill of lading: *Provided*, however, That the shipper shall in all instances have the right to determine, where competing lines of railroad constitute portions of a through line or route, over which of said competing lines so constituting a portion of said through line or route his freight shall be transported.

It shall be unlawful for any common carrier subject to the provisions of this Act, or any officer, agent, or employee of such common carrier, or for any other person or corporation lawfully authorized by such common carrier to receive information therefrom, knowingly to disclose to or permit to be acquired by any person or corporation other than the shipper or consignee, without the consent of such shipper or consignee, any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to such common carrier for interstate transportation which information may be used to the detriment or prejudice

of such shipper or consignee, or which may improperly disclose his business transactions to a competitor; and it shall also be unlawful for any person or corporation to solicit or knowingly receive any such information which may be so used: *Provided*, That nothing in this Act shall be construed to prevent the giving of such information in response to any legal process issued under the authority of any state or federal court, or to any officer or agent of the Government of the United States, or of any State or Territory, in the exercise of his powers, or to any officer or other duly authorized person seeking such information for the prosecution of persons charged with or suspected of crime; or information given by a common carrier to another carrier or its duly authorized agent, for the purpose of adjusting mutual traffic accounts in the ordinary course of business of such carriers.

Any person, corporation, or association violating any of the provisions of the next preceding paragraph of this section shall be deemed guilty of a misdemeanor, and for each offense, on conviction, shall pay to the United States a penalty of not more than one thousand dollars.

If the owner of property transported under this Act directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall be no more than is just and reasonable, and the Commission may, after hearing on a complaint or on its own initiative, determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the services so rendered or for the use of the instrumentality so furnished, and fix the same by appropriate order, which order shall have the same force and effect and be enforced in like manner as the orders above provided for under this section.

The foregoing enumeration of powers shall not exclude any power which the Commission would otherwise have in the making of an order under the provisions of this Act.

Sec. 16. [Summary. Provides means whereby the Commission may enforce its orders.]

Sec. 17. [Summary. Provides for rehearings of cases.]

Sec. 18. [Summary. Provides for salaries and expenses of Commission.]

Sec. 19. [Summary. Provides for principal office of Commission, and for special sessions and inquiries.]

Sec. 20. That the Commission is hereby authorized to require annual reports from all common carriers subject to the

provisions of this Act, and from the owners of all railroads engaged in interstate commerce as defined in this Act; to prescribe the manner in which such reports shall be made, and to require from such carriers specific answers to all questions upon which the Commission may need information. Such annual reports shall show in detail the amount of capital stock issued, the amounts paid therefor, and the manner of payment for the same; the dividends paid, the surplus fund, if any, and the numbers of stockholders; the funded and floating debts and the interest paid thereon; the cost and value of the carrier's property, franchises, and equipments; the number of employees and the salaries paid each class; the accidents to passengers, employees, and other persons, and the causes thereof; the amounts expended for improvements each year, how expended, and the character of such improvements; the earnings and receipts from each branch of business and from all sources; the operating and other expenses; the balances of profit and loss; and a complete exhibit of the financial operations of the carrier each year, including an annual balance sheet. Such reports shall also contain such information in relation to rates or regulations concerning fares or freights, or agreements, arrangements, or contracts affecting the same as the Commission may require; and the Commission may, in its discretion, for the purpose of enabling it the better to carry out the purposes of this Act, prescribe a period of time within which all common carriers subject to the provisions of this Act shall have, as near as may be, a uniform system of accounts, and the manner in which such accounts shall be kept.

Said detailed reports shall contain all the required statistics for the period of twelve months ending on the thirtieth day of June in each year, or on the thirty-first day of December in each year if the Commission by order substitute that period for the year ending June thirtieth, and shall be made out under oath and filed with the Commission at its office in Washington within three months after the close of the year for which the report is made, unless additional time be granted in any case by the Commission; and if any carrier, person, or corporation subject to the provisions of this Act shall fail to make and file said annual reports within the time above specified, or within the time extended by the Commission, for making and filing the same, or shall fail to make specific answer to any question authorized by the provisions of this section within thirty days from the time it is lawfully required to do so, such party shall

forfeit to the United States the sum of one hundred dollars for each and every day it shall continue to be in default with respect thereto. The Commission shall also have authority by general or special orders to require said carriers, or any of them, to file monthly reports of earnings and expenses, and to file periodical or special, or both periodical and special, reports concerning any matters about which the Commission is authorized or required by this or any other law to inquire or to keep itself informed or which it is required to enforce; and such periodical or special reports shall be under oath whenever the Commission so requires; and if any such carrier shall fail to make and file any such periodical or special report within the time fixed by the Commission, it shall be subject to the forfeitures last above provided.

Said forfeitures shall be recovered in the manner provided for the recovery of forfeitures under the provisions of this Act.

The oath required by this section may be taken before any person authorized to administer an oath by the laws of the State in which the same is taken.

The Commission may, in its discretion, prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers subject to the provisions of this Act, including the accounts, records, and memoranda of the movement of traffic as well as the receipts and expenditures of moneys. The Commission shall at all times have access to all accounts, records, and memoranda kept by carriers subject to this Act, and it shall be unlawful for such carriers to keep any other accounts, records, or memoranda than those prescribed or approved by the Commission, and it may employ special agents or examiners, who shall have authority under the order of the Commission to inspect and examine any and all accounts, records, and memoranda kept by such carriers. This provision shall apply to receivers of carriers and operating trustees.

In case of failure or refusal on the part of any such carrier, receiver, or trustee to keep such accounts, records, and memoranda on books and in the manner prescribed by the Commission, or to submit such accounts, records, and memoranda as are kept to the inspection of the Commission or any of its authorized agents or examiners, such carrier, receiver, or trustee shall forfeit to the United States the sum of five hundred dollars for each such offense and for each and every day of the continuance of such offense, such forfeitures to be recov-

erable in the same manner as other forfeitures provided for in this Act.

Any person who shall willfully make any false entry in the accounts of any book of accounts or in any record or memoranda kept by a carrier, or who shall willfully destroy, mutilate, alter, or by any other means or device falsify the record of any such account, record, or memoranda, or who shall willfully neglect or fail to make full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the carrier's business, or shall keep any other accounts, records, or memoranda than those prescribed or approved by the Commission, shall be deemed guilty of a misdemeanor, and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than one thousand dollars nor more than five thousand dollars or imprisonment for a term not less than one year nor more than three years, or both such fine and imprisonment: *Provided*, That the Commission may in its discretion issue orders specifying such operating, accounting, or financial papers, records, books, blanks, tickets, stubs, or documents or carriers which may, after a reasonable time, be destroyed, and prescribing the length of time such books, papers, or documents shall be preserved.

Any examiner who divulges any fact or information which may come to his knowledge during the course of such examination, except in so far as he may be directed by the Commission or by a court or judge thereof, shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not more than five thousand dollars or imprisonment for a term not exceeding two years, or both.

That the circuit and district courts of the United States shall have jurisdiction, upon the application of the Attorney-General of the United States at the request of the Commission, alleging a failure to comply with or a violation of any of the provisions of said Act to regulate commerce or of any Act supplementary thereto or amendatory thereof by any common carrier, to issue a writ or writs of mandamus commanding such common carrier to comply with the provisions of said Acts, or any of them.

And to carry out and give effect to the provisions of said Acts, or any of them, the Commission is hereby authorized to employ special agents or examiners who shall have power to administer oaths, examine witnesses, and receive evidence.

That any common carrier, railroad, or transportation company receiving property for transportation from a point in one State to a point in another State shall issue a receipt or bill of lading therefor and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass, and no contract, receipt, rule, or regulation shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed. *Provided:* That nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under existing law.

That the common carrier, railroad, or transportation company issuing such receipt or bill of lading shall be entitled to recover from the common carrier, railroad, or transportation company on whose line the loss, damage, or injury shall have been sustained the amount of such loss, damage, or injury as it may be required to pay to the owners of such property, as may be evidenced by any receipt, judgment, or transcript thereof.

SEC. 21. [Summary. Provides for annual reports.]

SEC. 22. [Summary. Provides for carrying of certain classes of persons or property that may be carried free or at reduced rates.]

SEC. 23. [Summary. Provides for the jurisdiction of the United States courts to issue writs of mandamus commanding common carriers to move traffic, or furnish transportation for an applicant.]

APPENDIX

A. FRANCE

Constitutional Laws

1

CONSTITUTIONAL LAW ON THE ORGANIZATION OF THE PUBLIC POWERS

(February 25, 1875)

Article 1. The legislative power shall be exercised by two assemblies: the Chamber of Deputies and the Senate.

The Chamber of Deputies shall be elected by universal suffrage, under the conditions determined by the electoral law.

The composition, the method of election, and the powers of the Senate shall be regulated by a special law.[1]

Art. 2. The President of the Republic shall be chosen by an absolute majority of votes of the Senate and Chamber of Deputies united in National Assembly.

He shall be elected for seven years. He is re-eligible.

Art. 3. The President of the Republic shall have the initiative of laws, concurrently with the members of the two chambers. He shall promulgate the laws when they have been voted by the two chambers; he shall look after and secure their execution.

He shall have the right of pardon; amnesty may only be granted by law.

He shall dispose of the armed force.

He shall appoint to all civil and military positions.

He shall preside over state functions; envoys and ambassadors of foreign powers shall be accredited to him.

[1] See constitutional law of February 24, 1875, and law of December 9, 1884, pp. 325, 331.

Every act of the President of the Republic shall be countersigned by a minister.

ART. 4. As vacancies occur on and after the promulgation of the present law, the President of the Republic shall appoint, in the Council of Ministers, the councilors of state in regular service.

The councilors of state thus chosen may be dismissed only by decree rendered in the Council of Ministers.

The councilors of state chosen by virtue of the law of May 24, 1872, shall not, before the expiration of their powers, be dismissed except in the manner provided by that law. After the dissolution of the National Assembly, they may be dismissed only by resolution of the Senate.[1]

ART. 5. The President of the Republic may, with the advice of the Senate, dissolve the Chamber of Deputies before the legal expiration of its term.

In that case the electoral colleges shall be summoned for new elections within the space of two months, and the Chamber within the ten days following the close of the elections.[2]

ART. 6. The ministers shall be collectively responsible to the chambers for the general policy of the government, and individually for their personal acts.

The President of the Republic shall be responsible only in case of high treason.[3]

ART. 7. In case of vacancy by death or for any other reason, the two chambers assembled together shall proceed at once to the election of a new President.

In the meantime the Council of Ministers shall be vested with the executive power.[4]

ART. 8. The chambers shall have the right by separate resolutions, taken in each by an absolute majority of votes, either upon their own initiative or upon the request of the President of the Republic, to declare a revision of the constitutional laws necessary.

After each of the two chambers shall have come to this decision, they shall meet together in National Assembly to proceed with the revision.

[1] By the law of May 24, 1872, councilors of state were elected by the National Assembly for a term of nine years. This clause therefore ceased to have any application after 1881.

[2] As amended by Art. 1 of the constitutional law of August 14, 1884. See p. 329.

[3] See Art. 12 of the constitutional law of July 16, 1875, p. 329.

[4] See Art. 3 of the constitutional law of July 16, 1875, p. 327.

The acts affecting revision of the constitutional laws, in whole or in part, shall be passed by an absolute majority of the members composing the National Assembly.

During the continuance, however, of the powers conferred by the law of November 20, 1873, upon Marshal de MacMahon, this revision shall take place only upon the initiative of the President of the Republic. [The republican form of government shall not be made the subject of a proposed revision. Members of families that have reigned in France are ineligible to the presidency of the Republic.[1]]

ART. 9. The seat of the executive power and of the two chambers is at Versailles.[2]

2

CONSTITUTIONAL LAW ON THE ORGANIZATION OF THE SENATE[3]

(February 24, 1875)

ARTICLE 1. The Senate shall consist of three hundred members: two hundred and twenty-five elected by the departments and colonies, and seventy-five elected by the National Assembly.

ART. 2. The departments of the Seine and of the Nord shall each elect five senators.

The following departments shall elect four senators each: Seine-Inférieure, Pas-de-Calais, Gironde, Rhône, Finistère, Côtes-du-Nord.

The following departments shall elect three senators each: Loire-Inférieure, Saône-et-Loire, Ille-et-Vilaine, Seine-et-Oise, Isère, Puy-de-Dome, Somme, Bouches-du-Rhône, Aisne, Loire, Manche, Maine-et-Loire, Morbihan, Dordogne, Haute-Garonne, Charente-Inférieure, Calvados, Sarthe, Hérault, Basses-Pyrénées, Gard, Aveyron, Vendée, Orne, Oise, Vosges, Allier.

All the other departments shall elect two senators each.

The following shall elect one senator each: the territory of Belfort, the three departments of Algeria, the four colonies of Martinique, Guadeloupe, Réunion, and the French Indies.

ART. 3. No one shall be a senator unless he is a French

[1] As amended by Art. 2 of the constitutional law of August 14, 1884.

[2] Repealed by constitutional law of June 21, 1879. See law of July 22, 1879, p. 330.

[3] Arts. 1 to 7 of this law were deprived of their constitutional character by the constitutional law of August 14, 1884, and were repealed by law of December 9, 1884. See pp. 329, 331.

citizen at least forty years of age, and in the enjoyment of civil and political rights.

ART. 4. The senators of the departments and of the colonies shall be elected by an absolute majority and by *scrutin de liste*, by a college meeting at the capital of the department or colony and composed:

(1) of the deputies;

(2) of the general councilors;

(3) of the arrondissement councilors;

(4) of delegates elected, one by each municipal council, from among the voters of the commune.

In the French Indies the members of the colonial council or of the local councils are substituted for the general councilors, arrondissement councilors, and delegates from the municipal councils.

They shall vote at the seat of government of each district.

ART. 5. The senators chosen by the Assembly shall be elected by *scrutin de liste* and by an absolute majority of votes.

ART. 6. The senators of the departments and of the colonies shall be elected for nine years and renewable by thirds every three years.

At the beginning of the first session the departments shall be divided into three series containing each an equal number of senators. It shall be determined by lot which series shall be renewed at the expiration of the first and second triennial periods.

ART. 7. The senators elected by the Assembly are irremovable.

Vacancies by death, by resignation, or for any other cause, shall, within the space of two months, be filled by the Senate itself.

ART. 8. The Senate shall have, concurrently with the Chamber of Deputies, the power to initiate and to pass laws. Money bills, however, shall first be introduced in and passed by the Chamber of Deputies.

ART. 9. The Senate may be constituted a Court of Justice to try either the President of the Republic or the ministers, and to take cognizance of attacks made upon the safety of the state.

ART. 10. Elections to the Senate shall take place one month before the time fixed by the National Assembly for its own dissolution. The Senate shall organize and enter upon its duties the same day that the National Assembly is dissolved.

ART. 11. The present law shall be promulgated only after the passage of the law on the public powers.

3

CONSTITUTIONAL LAW ON THE RELATIONS OF THE PUBLIC POWERS

(July 16, 1875)

ARTICLE 1. The Senate and the Chamber of Deputies shall assemble each year on the second Tuesday of January, unless convened earlier by the President of the Republic.

The two chambers shall continue in session at least five months each year. The sessions of the two chambers shall begin and end at the same time.

On the Sunday following the opening of the session, public prayers shall be addressed to God in the churches and temples, to invoke his aid in the labors of the chambers.[1]

ART. 2. The President of the Republic pronounces the closing of the session. He may convene the chambers in extraordinary session. He shall convene them if, during the recess, an absolute majority of the members of each chamber request it.

The President may adjourn the chambers. The adjournment, however, shall not exceed one month, nor take place more than twice in the same session.

ART. 3. One month at least before the legal expiration of the powers of the President of the Republic, the chambers shall be called together in National Assembly to proceed to the election of a new President.

In default of a summons, this meeting shall take place, as of right, the fifteenth day before the expiration of the term of the President.

In case of the death or resignation of the President of the Republic, the two chambers shall assemble immediately, as of right.

In case the Chamber of Deputies, in consequence of Art. 5 of the law of February 25, 1875, is dissolved at the time when the presidency of the Republic becomes vacant, the electoral colleges shall be convened at once, and the Senate shall assemble as of right.

ART. 4. Every meeting of either of the two chambers which shall be held at a time when the other is not in session is

[1] This clause was repealed by the constitutional law of August 14, 1884.

illegal and void, except in the case provided for in the preceding article, and that when the Senate meets as a court of justice; in the latter case, judicial duties alone shall be performed.

ART. 5. The sittings of the Senate and of the Chamber of Deputies shall be public.

Nevertheless either chamber may meet in secret session, upon the request of a fixed number of its members, determined by the rules.

It shall then decide by absolute majority whether the sitting shall be resumed in public upon the same subject.

ART. 6. The President of the Republic communicates with the chambers by messages, which shall be read from the tribune by a minister.

The ministers shall have entrance to both chambers, and shall be heard when they request it. They may be assisted, for the discussion of a specific bill, by commissioners named by decree of the President of the Republic.

ART. 7. The President of the Republic shall promulgate the laws within the month following the transmission to the government of the law finally passed. He shall promulgate, within three days, laws the promulgation of which shall have been declared urgent by an express vote of each chamber.

Within the time fixed for promulgation the President of the Republic may, by a message with reasons assigned, request of the two chambers a new discussion, which cannot be refused.

ART. 8. The President of the Republic shall negotiate and ratify treaties. He shall give information regarding them to the chambers as soon as the interests and safety of the state permit.

Treaties of peace and of commerce, treaties which involve the finances of the state, those relating to the person and property of French citizens in foreign countries, shall be ratified only after having been voted by the two chambers.

No cession, exchange, or annexation of territory shall take place except by virtue of a law.

ART. 9. The President of the Republic shall not declare war without the previous consent of the two chambers.

ART. 10. Each chamber shall be the judge of the eligibility of its members, and of the regularity of their election; it alone may receive their resignation.

ART. 11. The bureau [1] of each chamber shall be elected

[1] The bureau of the Senate consists of a president, four vice-presidents, eight secretaries, and three questors; the bureau of the Chamber of Deputies has the same composition.

each year for the entire session, and for every extraordinary session which may be held before the regular session of the following year.

When the two chambers meet together as a National Assembly, their bureau shall be composed of the president, vice-presidents, and secretaries of the Senate.

ART. 12. The President of the Republic may be impeached by the Chamber of Deputies only, and may be tried only by the Senate.

The ministers may be impeached by the Chamber of Deputies for offenses committed in the performance of their duties. In this case they shall be tried by the Senate.

The Senate may be constituted into a court of justice, by a decree of the President of the Republic, issued in the Council of Ministers, to try all persons accused of attempts upon the safety of the state.

If proceedings should have been begun in the regular courts, the decree convening the Senate may be issued at any time before the granting of a discharge.

A law shall determine the method of procedure for the accusation, trial, and judgment.

ART. 13. No member of either chamber shall be prosecuted or held responsible on account of any opinions expressed or votes cast by him in the performance of his duties.

ART. 14. No member of either chamber shall, during the session, be prosecuted or arrested for any offense or misdemeanor, except upon the authority of the chamber of which he is a member, unless he be taken in the very act.

The detention or prosecution of a member of either chamber shall be suspended for the session, and for the entire term of the chamber, if the chamber requires it.

4

CONSTITUTIONAL LAW PARTIALLY REVISING THE CONSTITUTIONAL LAWS [1]

(August 14, 1884)

ARTICLE 1. Paragraph 2 of Art. 5 of the constitutional law of February 25, 1875, on the Organization of the Public Powers, is amended as follows:

[1] The amendments to the constitutional laws have also been inserted in their proper places.

"In that case the electoral colleges shall meet for new elections within two months and the Chamber within the ten days following the close of the elections."

ART. 2. To paragraph 3 of Art. 8 of the same law of February 25, 1875, is added the following:

"The republican form of government shall not be made the subject of a proposed revision.

"Members of families that have reigned in France are ineligible to the presidency of the Republic."

ART. 3. Arts. 1 to 7 of the constitutional law of February 24, 1875, on the Organization of the Senate, shall no longer have a constitutional character.[1]

ART. 4. Paragraph 3 of Art. 1 of the constitutional law of July 16, 1875, on the Relation of the Public Powers, is repealed.

5

LAW RELATING TO THE SEAT OF THE EXECUTIVE POWER AND OF THE TWO CHAMBERS AT PARIS

(July 22, 1879)

ARTICLE 1. The seat of the executive power and of the two chambers is at Paris.

ART. 2. The palace of the Luxemburg and the Palais-Bourbon are assigned, the first to the use of the Senate, and the second to that of the Chamber of Deputies.

Nevertheless each of the chambers is authorized to choose, in the city of Paris, the palace which it wishes to occupy.

ART. 3. The various parts of the palace of Versailles now occupied by the Senate and the Chamber of Deputies shall preserve their arrangements.

Whenever, according to Arts. 7 and 8 of the law of February 25, 1875, on the organization of the public powers, a meeting of the National Assembly takes place, it shall sit at Versailles, in the present hall of the Chamber of Deputies.

Whenever, according to Art. 9 of the law of February 24, 1875, on the organization of the Senate, and Art. 12 of the constitutional law of July 16, 1875, on the relations of the public powers, the Senate shall be called upon to constitute itself a court of justice, it shall indicate the town and place where it proposes to sit.

[1] These articles were repealed by way of ordinary legislation, on December 9, 1884; see p. 331.

ART. 4. The Senate and Chamber of Deputies shall sit at Paris on and after November 3 next.

ART. 5. The presidents of the Senate and of the Chamber of Deputies are charged with the duty of securing the external and internal safety of the chambers over which they preside.

For this purpose they shall have the right to call upon the armed forces and upon authorities whose assistance they consider necessary.

Such requisitions may be addressed directly to all officers, commanders, or officials, who are bound to obey immediately, under the penalties established by the laws.

The presidents of the Senate and of the Chamber of Deputies may delegate to the questors or to one of them their right of demanding aid.

ART. 6. Petitions to either of the chambers shall be made and presented only in writing. It is forbidden to present them in person or at the bar.

ART. 7. Every violation of the preceding article, every provocation, by public speeches, by writings, or by printed matter, posted or distributed, to a crowd upon the public ways, having for its object the discussion, drawing up, or carrying to the chambers or to either of them, of petitions, declarations, or addresses, shall be punished by the penalties enumerated in paragraph 1 of Art. 5 of the law of June 7, 1848, whether or not any results follow from such actions.

ART. 8. The preceding provisions do not diminish the force of the law of June 7, 1848, on riotous assemblies.

ART. 9. Art. 463 of the Penal Code is applicable to the offenses mentioned in the present law.

6

LAW AMENDING THE ORGANIC LAWS ON THE ORGANIZATION OF THE SENATE AND THE ELECTION OF SENATORS

(December 9, 1884)

ARTICLE 1. The Senate shall be composed of three hundred members, elected by the departments and the colonies.

The present members, without any distinction between senators elected by the National Assembly or by the Senate and those elected by the departments and colonies, shall retain their offices during the time for which they have been chosen.

ART. 2. The department of the Seine shall elect ten senators.

The department of the Nord shall elect eight senators.

The following departments shall elect five senators each: Côtes-du-Nord, Finistère, Gironde, Ille-et-Vilaine, Loire, Loire-Inférieure, Pas-de-Calais, Rhône, Saône-et-Loire, Seine-Inférieure.

The following departments shall elect four senators each: Aisne, Bouches-de-Rhône, Charente-Inférieure, Dordogne, Haute-Garonne, Isère, Maine-et-Loire, Manche, Morbihan, Puy-de-Dôme, Seine-et-Oise, Somme.

The following departments shall elect three senators each: Ain, Allier, Ardèche, Ardennes, Aube, Aude, Aveyron, Calvados, Charente, Cher, Corrèze, Corse, Côte-d'Or, Creuse, Doubs, Drôme, Eure, Eure-et-Loir, Gard, Gers, Hérault, Indre, Indre-et-Loire, Jura, Landes, Loir-et-Cher, Haute-Loire, Loiret, Lot, Lot-et-Garonne, Marne, Haute-Marne, Mayenne, Meurthe-et-Moselle, Meuse, Nièvre, Oise, Orne, Basses-Pyrénées, Haute-Saône, Sarthe, Savoie, Haute-Savoie, Seine-et-Marne, Deux-Sèvres, Tern, Var, Vendée, Vienne, Haute-Vienne, Vosges, Yonne.

The following departments shall elect two senators each: Basses-Alpes, Hautes-Alpes, Alpes-Maritimes, Ariège, Cantal, Lozère, Hautes-Pyrénées, Pyrénées-Orientales, Tarn-et-Garonne, Vaucluse.

The following shall elect one senator each: The territory of Belfort, the three departments of Algeria, the four colonies: Martinique, Guadeloupe, Réunion, and French Indies.

ART. 3. In the departments where the number of senators is increased by the present law, the increase shall take effect as vacancies occur among the life senators.

For this purpose, within a week after the vacancy occurs, it shall be determined by lot in public session what department shall be called upon to elect a senator.

This election shall take place within three months of the determination by lot. However, if the vacancy occurs within six months preceding the triennial election, the vacancy shall not be filled until that election.

The term of office in case of a special election shall expire at the same time as that of the other senators belonging to the same department.

ART. 4. No one shall be a senator unless he is a French citizen at least forty years of age and in the enjoyment of civil and political rights.[1]

[1] By law of July 20, 1895, no one may become a member of Parliament unless he has complied with the law regarding military service.

Members of families that have reigned in France are ineligible to the Senate.

ART. 5. The soldiers of the land and naval forces shall not be elected Senators.

There are excepted from this provision:

(1) The marshals of France and admirals.

(2) The general officers maintained without limit of age in the first section of the list of the general staff and not provided with a command.

(3) The general officers placed in the second section of the list of the general staff.

(4) Members of the land and naval forces who belong either to the reserve of the active army or to the territorial army.

ART. 6. Senators shall be elected by *scrutin de liste*, by a college meeting at the capital of the department or of the colony, and composed:

(1) of the deputies;

(2) of the general councilors;

(3) of the councilors of the arrondissement;

(4) of delegates elected from among the voters of the commune, by each municipal council.

Councils composed of ten members shall elect one delegate.

Councils composed of twelve members shall elect two delegates.

Councils composed of sixteen members shall elect three delegates.

Councils composed of twenty-one members shall elect six delegates.

Councils composed of twenty-three members shall elect nine delegates.

Councils composed of twenty-seven members shall elect twelve delegates.

Councils composed of thirty members shall elect fifteen delegates.

Councils composed of thirty-two members shall elect eighteen delegates.

Councils composed of thirty-four members shall elect twenty-one delegates.

Councils composed of thirty-six members or more shall elect twenty-four delegates.

The Municipal Council of Paris shall elect thirty delegates.

In the French Indies the members of the local councils shall take the place of councilors of the arrondissement. The

municipal council of Pondichéry shall elect five delegates. The municipal council of Karikal shall elect three delegates. All of the other communes shall elect two delegates each.

The balloting takes place at the seat of government of each district.

ART. 7. Members of the Senate shall be elected for nine years.

The Senate shall be renewed every three years according to the order of the present series of departments and colonies.

ART. 8. Arts. 2 (paragraphs 1 and 2), 3, 4, 5, 8, 14, 16, 19, and 23 of the organic law of August 2, 1875, on the elections of senators, are amended as follows:

"Art. 2 (paragraphs 1 and 2). In each municipal council the election of delegates shall take place without debate and by secret ballot, by *scrutin de liste*, and by an absolute majority of votes cast. After two ballots a plurality shall be sufficient, and in case of an equality of votes the oldest is elected.

"The procedure and method shall be the same for the election of alternates.

"Councils having one, two, or three delegates to choose shall elect one alternate.

"Those choosing six or nine delegates shall elect two alternates.

"Those choosing twelve or fifteen delegates shall elect three alternates.

"Those choosing eighteen or twenty-one delegates shall elect four alternates.

"Those choosing twenty-four delegates shall elect five alternates.

"The municipal council of Paris shall elect eight alternates.

"The alternates shall take the place of delegates in case of refusal or inability to serve, in the order determined by the number of votes received by each of them.

"Art. 3. In communes where the duties of the municipal council are performed by a special delegation organized by virtue of Art. 44 of the law of April 5, 1884, the senatorial delegates and alternates shall be chosen by the former council.

"Art. 4. If the delegates were not present at the election, notice shall be given them by the mayor within twenty-four hours. They shall within five days notify the prefect of their acceptance. In case of declination or silence they shall be replaced by the alternates, who shall then be placed upon the list as the delegates of the commune.

"Art. 5. The official report of the election of delegates and alternates shall be transmitted at once to the prefect. It shall indicate the acceptance or declination of the delegates and alternates, as well as the protests made by one or more members of the municipal council against the legality of the election. A copy of this official report shall be posted on the door of the town hall.

"Art. 8. Protests concerning the election of delegates or of alternates shall be decided, subject to an appeal to the Council of State, by the council of the prefecture, and, in the colonies, by the privy council.

"Delegates whose elections may be set aside because they do not satisfy the conditions demanded by law, or because of informality, shall be replaced by the alternates.

"In case the election of a delegate and of an alternate is annulled, or in the case of the refusal or death of both of them after their acceptance, new elections shall be held by the municipal council on a day fixed by an order of the prefect.

"Art. 14. The first ballot shall begin at eight o'clock in the morning and close at noon. The second shall begin at two o'clock and close at five o'clock. The third shall begin at seven o'clock and close at ten o'clock. The results of the balloting shall be canvassed by the bureau and announced immediately by the president of the electoral college.

"Art. 16. Political meetings for the nomination of senators may be held from the date of the promulgation of the decree summoning the electors up to the day of the election, inclusive.

"The declaration prescribed by Article 2 of the law of June 30, 1881, shall be made by two voters, at least.[1]

"The forms and regulations of this article, as well as those of Article 3, shall be observed.

"The members of Parliament elected or electors in the department, the senatorial electors, delegates and alternates, and the candidates, or their representatives, may alone be present at these meetings.

"The municipal authorities shall see to it that no other person is admitted.

"Delegates and alternates shall present as a means of identification a certificate from the mayor of the commune; candidates or their representatives, a certificate from the official

[1] The law of June 30, 1881, relates to notice which must be given to the authorities before any public meeting can be held.

who shall have received the declaration mentioned in paragraph 2.

"Art. 19. Every attempt at corruption or constraint by the employment of means enumerated in Arts. 177 and following of the Penal Code, to influence the vote of an elector or to keep him from voting, shall be punished by imprisonment of from three months to two years, and by a fine of from fifty francs to five hundred francs, or by either of these penalties.

"Art. 463 of the Penal Code is applicable to the penalties provided by the present article.

"Art. 23. Vacancies caused by the death or resignation of senators shall be filled within three months; however, if the vacancy occurs within six months preceding the triennial elections, it shall not be filled until those elections."

ART. 9. There are repealed:

(1) Arts. 1 to 7 of the law of February 24, 1875, on the organization of the Senate.

(2) Arts. 24 and 25 of the law of August 2, 1875, on the elections of senators.

B. GERMANY

The Constitution of the German Empire

(April 16, 1871)

His Majesty the King of Prussia, in the name of the North German Confederation, His Majesty the King of Bavaria, His Majesty the King of Württemberg, His Royal Highness the Grand Duke of Baden, and His Royal Highness the Grand Duke of Hesse and Rhenish Hesse for those parts of the Grand Duchy of Hesse lying south of the Main, conclude an eternal alliance for the protection of the territory of the Confederation, and of the rights of the same as well as for the promotion of the welfare of the German people. This Confederation shall bear the name of the German Empire, and shall have the following Constitution:

I. *Federal Territory*

Article 1. The territory of the Confederation shall consist of the states of Prussia with Lauenburg, Bavaria, Saxony, Württemberg, Baden, Hesse, Mecklenburg-Schwerin, Saxe-Weimar, Mecklenburg-Strelitz, Oldenburg, Brunswick, Saxe-Meiningen, Saxe-Altenburg, Saxe-Coburg-Gotha, Anhalt, Schwarzburg-Rudolstadt, Schwarzburg-Sondershausen, Waldeck, Reuss elder line, Reuss younger line, Schaumburg-Lippe, Lippe, Lübeck, Bremen, and Hamburg.

II. *Legislation of the Empire*

Art. 2. Within this federal territory the Empire shall exercise the right of legislation in accordance with the provisions of this constitution; and the laws of the Empire shall take precedence of the laws of the states. The laws of the Empire shall receive their binding force by imperial promulgation, through the medium of an imperial gazette. If no other time is designated for the published law to take effect, it shall become effective on the fourteenth day after its publication in the *Imperial Gazette* at Berlin.

ART. 3. There shall be a common citizenship for all Germany, and the members (subjects or citizens) of each state of the Confederation shall be treated in every other state as natives, and shall accordingly have the right of becoming permanent residents; of carrying on business; of filling public offices; of acquiring real estate; of obtaining citizenship, and of enjoying all other civil rights under the same conditions as those born in the state, and shall also have the same treatment as regards judicial remedies and the protection of the laws.

No German shall be limited in the exercise of these rights by the authorities of his native state, or by the authorities of any other state of the Confederation.

The regulations governing the care of paupers and their admission into the various local unions, shall not, however, be affected by the principle enunciated in the first paragraph.

In like manner, until further action, those treaties shall remain in force which have been concluded between the several states of the Confederation in relation to the taking over of persons liable to be deported, the care of sick and the burial of deceased citizens.

With respect to the performance of military service in the several states, the necessary laws will be passed by the Empire.

As against foreign countries all Germans shall have an equal claim upon the protection of the Empire.

ART. 4. The following matters shall be under the supervision of the Empire and subject to imperial legislation:

(1) Regulations with respect to the freedom of migration; matters of domicile and settlement; citizenship; passports; surveillance of foreigners; trade and industry, including insurance; so far as these matters are not already provided for by Art. 3 of this constitution, in Bavaria, however, exclusive of matters relating to domicile and settlement; and likewise matters relating to colonization and emigration to foreign countries.

(2) Legislation concerning customs duties, commerce, and such taxes as are to be applied to the uses of the Empire.

(3) Regulation of weights and measures; of the coinage; and the establishment of the principles for the issue of funded and unfunded paper money.

(4) General banking regulations.

(5) Patents for inventions.

(6) The protection of intellectual property.

(7) The organization of a general system of protection for German trade in foreign countries, of German navigation, and of the German flag on the high seas; and the establishment of a common consular representation, which shall be maintained by the Empire.

(8) Railway matters, subject in Bavaria to the provisions of Art. 46; and the construction of land and water ways for the purposes of public defense, and of general commerce.

(9) Rafting and navigation upon waterways which are common to several states, the condition of such waterways, river and other water dues [and also the signals of maritime navigation (beacons, buoys, lights, and other signals)].[1]

(10) Postal and telegraph affairs; in Bavaria and Württemberg, however, only in accordance with the provisions of Art. 52.

(11) Regulations concerning the reciprocal execution of judicial sentences in civil matters, and the fulfillment of requisitions in general.

(12) The authentication of public documents.

(13) General legislation as to the whole domain of civil and criminal law, and judicial procedure.[2]

(14) The imperial military and naval affairs.

(15) Police regulation of medical and veterinary matters.

(16) Laws relating to the press, and to the right of association.

ART. 5. The legislative power of the Empire shall be exercised by the Bundesrat and the Reichstag. A majority of the votes of both bodies shall be necessary and sufficient for the passage of a law.

With respect to laws concerning the army, or navy, or the taxes specified in Art. 35, the vote of the præsidium[3] shall decide in case of a difference of opinion in the Bundesrat, if such vote be in favor of the maintenance of existing arrangements.

III. *The Bundesrat*

ART. 6. The Bundesrat shall consist of representatives of the members of the Confederation, among which the votes shall be divided in such manner that Prussia with the former

[1] The last clause of this section was added by law of March 3, 1873.

[2] As amended December 20, 1873. The original text read: "General legislation concerning the law of obligations, criminal law, commercial law and commercial paper, and judicial procedure."

[3] *I.e.* Prussia.

votes of Hanover, Electoral Hesse, Holstein, Nassau, and Frankfort shall have 17 votes; Bavaria, 6; Saxony, 4; Württemberg, 4; Baden, 3; Hesse, 3; Mecklenburg-Schwerin, 2; Saxe-Weimar, 1; Mecklenburg-Strelitz, 1; Oldenburg, 1; Brunswick, 2; Saxe-Meiningen, 1; Saxe-Altenburg, 1; Saxe-Coburg-Gotha, 1; Anhalt, 1; Schwarzburg-Rudolstadt, 1; Schwarzburg-Sondershausen, 1; Waldeck, 1; Reuss, elder line, 1; Reuss, younger line, 1; Schaumburg-Lippe, 1; Lippe, 1; Lübeck, 1; Bremen, 1; Hamburg, 1 — total, 58 votes.

Each member of the Confederation may appoint as many delegates to the Bundesrat as it has votes, but the votes of each state shall be cast only as a unit.

ART. 7. The Bundesrat shall take action upon:

(1) The measures to be proposed to the Reichstag, and the resolutions passed by the same.

(2) The general administrative provisions and arrangements necessary for the execution of the imperial laws, so far as no other provision is made by law.

(3) The defects which may be discovered in the execution of the imperial laws, or of the provisions and arrangements heretofore mentioned.

Each member of the Confederation shall have the right to make propositions and introduce motions, and it shall be the duty of the præsidium to submit them for deliberation.

Decision shall be reached by simple majority, with the exceptions provided for by Arts. 5, 37, and 78. Votes not represented or not instructed shall not be counted. In the case of a tie, the vote of the præsidium shall decide.

When legislative action is taken upon a subject which, according to the provisions of this constitution, does not concern the whole Empire, only the votes of those states of the Confederation interested in the matter in question shall be counted.

ART. 8. The Bundesrat shall appoint from its own members permanent committees:

(1) On the army and the fortifications.
(2) On marine affairs.
(3) On customs duties and taxes.
(4) On commerce and trade.
(5) On railroads, posts, and telegraphs.
(6) On judicial affairs.
(7) On accounts.

In each of these committees there shall be representatives

of at least four states of the Confederation, besides the præsidium, and each state shall be entitled to only one vote therein. In the committee on the army and fortifications Bavaria shall have a permanent seat; the remaining members of this committee, as well as the members of the committee on marine affairs, shall be appointed by the Emperor; the members of the other committees shall be elected by the Bundesrat. These committees shall be newly formed at each session of the Bundesrat, *i.e.* each year, and the retiring members shall be eligible for re-election.

A Committee on Foreign Affairs, over which Bavaria shall preside, shall also be appointed in the Bundesrat; it shall be composed of the plenipotentiaries of the kingdoms of Bavaria, Saxony, and Württemberg, and of two plenipotentiaries of other states of the Empire, who shall be elected annually by the Bundesrat.

The employees necessary for the conduct of their work shall be placed at the disposal of the committees.

ART. 9. Each member of the Bundesrat shall have the right to appear in the Reichstag, and must be heard there at any time he shall so request, in order to represent the views of his government, even when such views shall not have been adopted by the majority of the Bundesrat. No one shall at the same time be a member of the Bundesrat and of the Reichstag.

ART. 10. The Emperor shall afford the customary diplomatic protection to the members of the Bundesrat.

IV. *The Presidency*

ART. 11. To the King of Prussia shall belong the presidency of the Confederation, and he shall have the title of German Emperor. It shall be the duty of the Emperor to represent the Empire among nations, to declare war and to conclude peace in the name of the Empire, to enter into alliances and other treaties with foreign countries, to accredit ambassadors and to receive them.

For a declaration of war in the name of the Empire, the consent of the Bundesrat is required, unless an attack is made upon the federal territory or its coasts.

So far as treaties with foreign countries relate to matters which, according to Art. 4, are to be regulated by imperial legislation, the consent of the Bundesrat shall be required for

their conclusion, and the approval of the Reichstag shall be necessary to render them valid.

ART. 12. The Emperor shall have the right to convene the Bundesrat and the Reichstag, and to open, adjourn, and close them.

ART. 13. The Bundesrat and the Reichstag shall be convened annually, and the Bundesrat may be called together for the preparation of business without the Reichstag; the latter, however, shall not be convened without the Bundesrat.

ART. 14. The Bundesrat shall be convened whenever a meeting is demanded by one third of the total number of votes.

ART. 15. The Imperial Chancellor, to be appointed by the Emperor, shall preside in the Bundesrat, and supervise the conduct of its business.

The Imperial Chancellor shall have the right to delegate the power to represent him to any other member of the Bundesrat; this delegation shall be made in writing.

ART. 16. The necessary bills shall be laid before the Reichstag in the name of the Emperor, in accordance with the resolutions of the Bundesrat, and shall be advocated in the Reichstag by members of the Bundesrat, or by special commissioners appointed by the latter.

ART. 17. It shall be the duty of the Emperor to prepare and publish the laws of the Empire, and to supervise their execution. The decrees and ordinances of the Emperor shall be issued in the name of the Empire, and shall require for their validity the countersignature of the Imperial Chancellor, who thereby assumes the responsibility for them.

ART. 18. The Emperor shall appoint imperial officials, cause them to take the oath to the Empire, and dismiss them when necessary.

Officials of any one of the states of the Confederation, who shall be appointed to any imperial office, shall enjoy, with reference to the Empire, the same rights as those to which they are entitled in their native state by virtue of their official position, provided that no other legislative provision shall have been made previous to their entrance into the service of the Empire.

ART. 19. If the states of the Confederation do not fulfill their constitutional duties, they may be compelled to do so by execution. This execution shall be decided upon by the Bundesrat, and carried out by the Emperor.

V. *The Reichstag*

ART. 20. The members of the Reichstag shall be chosen in a general direct election and by secret ballot.

Until regulation by law, the power to make such regulation being reserved by sec. 5 of the Election Law of May 31, 1869, 48 deputies shall be elected in Bavaria, 17 in Württemberg, 14 in Baden, 6 in Hesse south of the River Main, and the total number shall consequently be 382.[1]

ART. 21. Government officials shall not require leave of absence in order to enter the Reichstag.

When a member of the Reichstag accepts a salaried office of the Empire, or a salaried office in one of the states of the Confederation, or accepts any office of the Empire or of a state involving higher rank or salary, he shall forfeit his seat and vote in the Reichstag, but may recover his place in the same by a new election.

ART. 22. The proceedings of the Reichstag shall be public.

No one shall be held responsible for truthful reports of the proceedings of the public sessions of the Reichstag.

ART. 23. The Reichstag shall have the right to propose laws within the competence of the Empire, and to refer petitions, addressed to it, to the Bundesrat or the chancellor of the Empire.

ART. 24. The Reichstag shall be elected for five years.[2] It may be dissolved during that time by a resolution of the Bundesrat, with the consent of the Emperor.

ART. 25. In case of a dissolution of the Reichstag, new elections shall take place within a period of sixty days, and the Reichstag shall be called together within a period of ninety days after its dissolution.

ART. 26. Without the consent of the Reichstag, an adjournment of that body shall not exceed the period of thirty days, and shall not be repeated during the same session.

ART. 27. The Reichstag shall examine into the legality of the election of its members and decide thereon. It shall regulate its own procedure, and its own discipline, through its

[1] Including, that is to say, those deputies returned by the states of the North German Confederation. By law of June 25, 1873, fifteen additional members are elected from Alsace-Lorraine. With certain minor exceptions every male German of the age of twenty-five years may vote for members of and may be elected to the Reichstag.

[2] Art. 24 amended, from three to five years, March 19, 1888.

order of business, and elect its president, vice-presidents, and secretaries.

ART. 28. The Reichstag shall take action by absolute majority. To render any action valid, the presence of a majority of the statutory number of members is required.[1]

ART. 29. The members of the Reichstag are the representatives of the people as a whole, and shall not be bound by orders or instructions.

ART. 30. No member of the Reichstag shall at any time suffer legal or disciplinary prosecution on account of his vote, or on account of utterances made while in the performance of his functions, or be held responsible in any other way outside of the Reichstag.

ART. 31. Without the consent of the Reichstag, no one of its members shall be tried or arrested during the session for any penal offense, unless he be taken in the commission of the offense, or during the course of the following day.

Like consent shall be required in the case of arrest for debt.

At the request of the Reichstag all criminal proceedings instituted against one of its members, and any detentions for judicial inquiry or in civil cases, shall be suspended during its session.

ART. 32. The members of the Reichstag as such shall receive no salaries. They shall receive an indemnification in accordance with the provisions of law.[2]

VI. *Customs and Commerce*

ART. 33. Germany shall form one customs and commercial territory, having a common frontier for the collection of duties. Such parts of the territory as cannot, by reason of their situation, be suitably embraced within the customs frontier, shall be excluded.

All articles which are the subject of free traffic in one

[1] The second paragraph of this article was repealed by law of February 24, 1873. It read as follows: "For the decision of matters which, according to this constitution, do not concern the entire Empire, only such members shall vote as are elected from states whose interests are affected by the proposition."

[2] As altered May 21, 1906. Art. 32, as originally worded, forbade any compensation to members of the Reichstag. A law of May 21, 1906, provides that members of the Reichstag shall receive: (1) free transportation on the German railways during the sessions of the Reichstag and for eight days before the beginning of and eight days after the close of each session; and (2) a yearly remuneration of three thousand marks.

state of the Empire may be brought into any other state, and in the latter shall be subject only to such internal taxes as are imposed upon similar domestic productions.

Art. 34. The Hanse cities, Bremen and Hamburg, together with a part of their own or of the surrounding territory suitable for such purpose, shall remain free ports outside of the common customs frontier, until they request admission within such frontier.

Art. 35. The Empire shall have the exclusive power to legislate concerning everything relating to the customs; concerning the taxation of salt and tobacco produced in the federal territory, and of domestic brandy and beer, and of sugar and sirup prepared from beets or other domestic products; concerning the mutual protection against fraud with reference to all taxes upon articles of consumption levied in the several states of the Empire; as well as concerning the measures which may be required in the territory, outside the customs boundaries, for the security of the common customs frontier.

In Bavaria, Württemberg, and Baden, the matter of taxing domestic brandy and beer is reserved to the legislation of the states. The states of the Confederation shall, however, endeavor to bring about uniform legislation regarding the taxation of these articles also.

Art. 36. The administration and collection of customs duties and of the taxes on articles of consumption (Art. 35) shall be left to each state of the Confederation within its own territory, so far as these functions have heretofore been exercised by each state.

The Emperor shall superintend the observance of legal methods by means of imperial officers whom he shall appoint, after consulting the committee of the Bundesrat on customs duties and taxes, to act in coöperation with the customs or tax officials and with the directive boards of the several states.

Reports made by these officers concerning defects in the administration of the joint legislation (Art. 35) shall be submitted to the Bundesrat for action.

Art. 37. In taking action upon the rules and regulations for the execution of the joint legislation (Art. 35), the vote of the præsidium shall decide when it is cast in favor of maintaining the existing rule or regulation.

Art. 38. The revenues from customs and from the other taxes designated in Art. 35, so far as the latter are subject to imperial legislation, shall go to the treasury of the Empire.

Such revenues shall consist of the total receipts from the customs and excise taxes, after deducting therefrom:

(1) Tax rebates and reductions in conformity with existing laws or general administrative regulations.

(2) Reimbursements for taxes improperly collected.

(3) The costs of collection and of administration, viz.:

(*a*) In case of the customs, the costs which are required for the protection and collection of customs on the frontiers and in the frontier districts.

(*b*) For the salt tax, the costs which are incurred for the salaries of the officers charged with the collection and control of this tax at the salt works.

(*c*) For the taxes on beet sugar and on tobacco, the compensation which is to be allowed, according to the existing rules of the Bundesrat, to the several state governments for the cost of administering these taxes.

(*d*) Fifteen per cent of the total receipts from other taxes.

The territories situated outside of the common customs frontier shall contribute to the expenses of the Empire by payment of a lump sum.

Bavaria, Württemberg, and Baden shall not share in the revenues which go into the treasury of the Empire, from duties on brandy and beer, nor in the corresponding portion of the aforesaid payments in lump sum.

[The provision of Art. 38, paragraph 2, number 3 (*d*) of the imperial constitution is repealed, in so far as it relates to the tax on breweries. The compensation to be allowed to the states for the expense of collecting and administering the tax on breweries shall be fixed by the Bundesrat.[1]]

Art. 39. The quarterly summaries made by the revenue officers of the federal states at the end of each quarter, and the final statement, made at the end of the year, after the closing of the accounts, of the receipts which have become due in the course of the quarter, or during the fiscal year, from customs and from taxes on consumption which, according to Art. 38, belong to the treasury of the Empire, shall be arranged by the administrative officers of the various states, after a preliminary audit, into general summaries, in which each tax shall be separately entered. These summaries shall be transmitted to the Committee of Accounts of the Bundesrat.

The latter, upon the basis of these summaries, shall fix provisionally every three months the amounts due to the

[1] Added by amendment of June 3, 1906.

imperial treasury from the treasury of each state, and it shall inform the Bundesrat and the states of the amounts so fixed; furthermore, it shall submit to the Bundesrat annually the final statement of these amounts with its remarks. The Bundesrat shall take action upon the determination of such amounts.

ART. 40. The terms of the Customs Union Treaty of July 8, 1867, shall remain in force, so far as they have not been altered by the provisions of this constitution, and so long as they are not altered in the manner designated in Arts. 7 or 78.

VII. *Railways*

ART. 41. Railways, which are considered necessary for the defense of Germany, or in the interest of general commerce, may, by force of imperial law, be constructed at the expense of the Empire, even against the opposition of the members of the Union through whose territory the railroads run, without prejudice, however, to the sovereign rights of the states; or private persons may be granted the right to construct railways, and receive the right of eminent domain.

Every existing railway is bound to permit new railroad lines to be connected with it, at the expense of the latter.

All laws which grant existing railway undertakings the right to prevent the building of parallel or competitive lines are hereby repealed throughout the Empire, without prejudice to rights already acquired. Such rights of prevention shall not be granted in future concessions.

ART. 42. The governments of the federal states bind themselves, in the interest of general commerce, to manage the German railways as one system, and for this purpose to have all new lines constructed and equipped according to a uniform plan.

ART. 43. Accordingly, as soon as possible, uniform arrangements as to operation shall be made, and especially shall uniform regulations be adopted for the police of railways. The Empire shall take care that the various railway administrations keep the roads at all times in such condition as is necessary for public security and furnish them with such equipment as the needs of traffic may require.

ART. 44. Railway administrations are bound to run as many passenger trains of suitable speed as may be required for through traffic, and for the establishment of harmony

between time tables; also to make provision for such freight trains as may be necessary for the transport of goods, and to organize a system of through forwarding both in passenger and freight traffic, permitting rolling stock to go from one road to another for the usual remuneration.

ART. 45. The Empire shall have control of the tariff of charges. It shall especially exert itself to the end:

(1) That uniform regulations as to operation be introduced as soon as possible on all German railway lines.

(2) That the tariff be reduced and made uniform as far as possible, and particularly that in the long-distance transportation of coal, coke, wood, ores, stone, salt, pig iron, manure, and similar articles, a tariff be introduced suitably modified in the interests of agriculture and industry; and that the one-pfennig tariff be introduced as soon as practicable.

ART. 46. In case of public distress, especially in case of an extraordinary rise in the price of provisions, it shall be the duty of the railroads to adopt temporarily a low special tariff suited to the circumstances, to be fixed by the Emperor on motion of the competent committee of the Bundesrat, for the transport of grain, flour, legumes, and potatoes. This tariff shall, however, not be lower than the lowest existing rate for raw produce on the said line.

The foregoing provisions, and those of Arts. 42 to 45, shall not apply to Bavaria.

The imperial government, however, shall have the power, with respect to Bavaria also, to establish by means of legislation uniform standards for the construction and equipment of railways which may be of importance for the defense of the country.

ART. 47. The managers of all railways shall be required to obey, without hesitation, requisitions made by the authorities of the Empire for the use of their roads for the defense of Germany. In particular shall troops and all materials of war be forwarded at uniformly reduced rates.

VIII. *Post and Telegraph*

ART. 48. The postal and telegraph systems shall be organized and managed on a uniform plan, as state institutions throughout the German Empire.

The legislation of the Empire in regard to postal and telegraph affairs, provided for in Art. 4, shall not extend to those

matters the control of which is left to governmental ordinance or administrative regulation, according to the principles which have prevailed in the administration of post and telegraph by the North German Confederation.

ART. 49. The receipts from post and telegraph throughout the Empire shall belong to a common fund. The expense shall be paid from the general receipts. The surplus shall go into the imperial treasury (Section XII).

ART. 50. The Emperor shall have the supreme supervision of the administration of post and telegraph. The officers appointed by him shall have the duty and the right to see to it that uniformity be established and maintained in the organization of the administration and in the conduct of business, as well as in the qualifications of employees.

The Emperor shall have the power to issue governmental instructions and general administrative regulations, and also the exclusive right to regulate the relations with the postal and telegraph systems of other countries.

It shall be the duty of all officers of the postal and telegraph administration to obey the orders of the Emperor. This obligation shall be assumed in the oath of office.

The appointment of such superior officers as shall be required for the administration of the post and telegraph in the various districts (such as directors, counselors, and superintendents), furthermore, the appointment of officers of the post and telegraph acting in the capacity of organs of the aforesaid authorities as supervisors or for other services in the several districts (such as inspectors or controllers), shall be made throughout the Empire by the Emperor, to whom such officers shall take the oath of office. The governments of the several states shall receive timely notice of the aforementioned appointments, as far as they may relate to their territories, so that they may confirm and publish them.

Other officers required in the administration of the post and telegraph, as well as all those employed for local and technical work, including the officials in the local offices, and so forth, shall be appointed by the governments of the respective states.

Where there is no independent state administration of post or telegraph, the terms of special treaties shall control.

ART. 51. In consideration of the differences which have heretofore existed in the net receipts of the state postal administrations of the several districts, and for the purpose of

securing a suitable equalization during the period of transition below named, the following procedure shall be observed in assigning the surplus of the postal administration for general imperial purposes (Art. 49):

From the postal surpluses which accumulated in the several postal districts during the five years from 1861 to 1865, a yearly average shall be computed, and the share which every separate postal district has had in the surplus resulting therefrom for the whole territory of the Empire, shall be expressed in a percentage.

In accordance with the ratio thus ascertained, the several states shall be credited on the account of their other contributions to the expenses of the Empire, with their quota accruing from the postal surplus in the Empire, for a period of eight years following their entrance into the postal administration of the Empire.

At the end of the said eight years the distinction shall cease, and any surplus from the postal administration shall go, without division, into the imperial treasury, according to the principle contained in Art. 49.

Of the quota of the postal surplus which accrues during the aforementioned period of eight years in favor of the Hanse cities, one half shall each year be placed at the disposal of the Emperor, for the purpose of providing for the establishment of the proper postal organizations in the Hanse cities.

ART. 52. The provisions of the foregoing Arts. 48 to 51 do not apply to Bavaria and Württemberg. In their place the following provisions shall be valid for these two states of the Empire:

The Empire alone shall have power to legislate upon the privileges of the post and telegraph, upon the legal relations of both institutions to the public, upon the franking privilege and the postal rates, excepting, however, the adoption of administrative regulations and of rates for the internal communication within Bavaria and Württemberg respectively; and, under like limitations, upon the fixing of charges for telegraphic correspondence.

In the same manner, the Empire shall have the regulation of postal and telegraphic communication with foreign countries, excepting the immediate intercourse of Bavaria and Württemberg with neighboring states not belonging to the Empire, the regulation of which is subject to the provisions of Art. 49 of the postal treaty of November 23, 1867.

Bavaria and Württemberg shall not share in the postal and telegraphic receipts coming into the treasury of the Empire.

IX. *Marine and Navigation*

ART. 53. The navy of the Empire shall be a united one, under the supreme command of the Emperor. The Emperor is charged with its organization and construction; he shall appoint the officers and employees of the navy, and they and the seamen shall take an oath of obedience to him.

The harbor of Kiel and the harbor of the Jade are imperial naval ports.

The expense required for the establishment and maintenance of the navy and of the institutions connected therewith shall be defrayed from the treasury of the Empire.

All seafaring men of the Empire, including machinists and artisans employed in ship-building, are exempt from service in the army, but are liable to service in the imperial navy.[1]

ART. 54. The merchant vessels of all states of the Union shall form a united mercantile marine.

The Empire shall determine the process for ascertaining the tonnage of sea-going vessels, shall regulate the issuing of tonnage-certificates and of ship-certificates, and shall fix the conditions upon which a license to command a sea-going vessel shall be granted.

The merchant vessels of all the federated states shall be admitted on equal footing to the harbors and all natural and artificial watercourses of the several states of the Union, and shall be accorded similar treatment therein. The fees which may be collected in harbors, from sea-going vessels or from their cargoes, for the use of marine institutions, shall not exceed the amount necessary for the maintenance and ordinary repair of these institutions.

On all natural watercourses taxes may only be levied for the use of special institutions which serve to facilitate commercial intercourse. These taxes as well as the charge for navigating such artificial channels as are the property of the state shall not exceed the amount required for the maintenance

[1] Paragraph 5 of Art. 53 was repealed by law of May 26, 1893; it read as follows: "The apportionment of requisitions to supply the ranks of the navy shall be made according to the actual seafaring population, and the number furnished in accordance herewith by each state shall be deducted from the number otherwise required for the army."

and ordinary repair of such institutions and establishments. These provisions shall apply to rafting, in so far as it is carried on along navigable watercourses.

The power to lay other or higher taxes upon foreign vessels or their cargoes than those which are paid by the vessels of the federal states or their cargoes shall belong only to the Empire and not to the separate states.

ART. 55. The flag of the naval and merchant marine is black, white, and red.

X. *Consular Affairs*

ART. 56. The Emperor shall have the supervision of all consular affairs of the German Empire, and he shall appoint consuls, after hearing the Committee of the Bundesrat on Trade and Commerce.

No new state consulates shall be established within the districts covered by German consuls. German consuls shall perform the functions of state consuls for the states of the Union not represented in their districts. All the state consulates now existing shall be abolished as soon as the organization of the German consulates shall be completed in such a manner that the representation of the separate interests of all the federal states shall be recognized by the Bundesrat as satisfactorily secured by the German consulates.

XI. *Military Affairs of the Empire*

ART. 57. Every German is liable to military duty, and in the discharge of this duty no substitute shall be accepted.

ART. 58. The costs and the burden of the entire military system of the Empire shall be borne equally by all the federal states and their subjects, so that neither special privileges nor burdens upon particular states or classes are in principle permissible. Where an equal distribution of the burdens cannot be effected *in natura* without prejudice to the public welfare, the equalization shall be effected by legislation in accordance with the principles of justice.

ART. 59. Every German capable of bearing arms shall belong for seven years to the standing army, as a rule from the end of his twentieth to the beginning of his twenty-eighth year; during the next five years he shall belong to the national guard (*Landwehr*) of first summons, and then to the national

guard of second summons until the thirty-first day of March of the year in which he reaches the age of thirty-nine years.

During the period of service in the standing army the members of the cavalry and of the mounted field artillery are required to serve the first three years in unbroken active service; all other forces are required to give the first two years in active service.

As regards the emigration of men belonging to the reserve, only those provisions shall be in force which apply to the emigration of members of the national guard (*Landwehr*).[1]

ART. 60. The number of men in the German army in time of peace shall be fixed until the thirty-first day of December, 1871, at 1 per cent of the population of 1867, and shall be furnished by the several federal states in proportion to their population. After the above date the effective strength of the army in time of peace shall be fixed by imperial legislation.

ART. 61. After the publication of this constitution the entire Prussian system of military legislation shall be introduced without delay throughout the Empire, both the statutes themselves and the regulations, instructions, and ordinances issued for their execution, explanation, or completion; especially, the military penal code of April 3, 1845; the law of military penal procedure of April 3, 1845; the ordinance concerning the courts of honor, of July 20, 1843; the regulations with respect to recruiting, time of service, matters relating to quarters and subsistence, to the quartering of troops, to compensation for injury done to fields, to mobilization of troops, etc., in times of peace and war. The military ordinance relating to religious observances is, however, excepted.

When a uniform organization of the German army for war purposes shall have been established, a comprehensive military code for the Empire shall be submitted to the Reichstag and the Bundesrat for their action, in accordance with the constitution.

ART. 62. For the purpose of defraying the expenses of the whole German army, and of the institutions connected therewith, the sum of two hundred and twenty-five thalers for each man in the army on the peace footing, according to Art. 60, shall be annually placed at the disposal of the Emperor until the thirty-first day of December, 1871 (see Section XII).

[1] This article is given as amended by law of April 15, 1905. It was also altered by law of February 11, 1888.

After the thirty-first day of December, 1871, the several states shall pay these contributions into the imperial treasury. Until it is altered by a law of the Empire, the strength of the army in time of peace, as temporarily fixed in Art. 60, shall be taken as a basis for calculating the amounts of such contributions.

The expenditure of these sums for the imperial army and its establishments shall be fixed by the budgetary law.

In determining the budget of military expenditure, the organization of the imperial army, legally established in accordance with this constitution, shall be taken as a basis.

ART. 63. The total land force of the Empire shall form one army, which shall be under the command of the Emperor, in war and in peace.

The regiments, etc., throughout the whole German army shall bear continuous numbers. As to the uniform, the primary colors and cut of the Prussian uniform shall be the standard. It is left to commanders of the several contingents to determine upon external marks of distinction (cockades, etc.).

It shall be the duty and the right of the Emperor to take care that throughout the German army all divisions be kept full and ready to take the field, and that uniformity be established and maintained in regard to organization and formation, equipment and command, in the training of the men, and in the qualifications of the officers. For this purpose the Emperor shall have authority to satisfy himself at any time, by inspection, of the condition of the several contingents, and to order the correction of defects disclosed by such inspection.

The Emperor shall determine the strength, composition, and division of the contingents of the imperial army, and also the organization of the national guard (*Landwehr*), and he shall have the right to determine the garrisons within the territory of the Union, as also to mobilize any portion of the imperial army.

In order to maintain the indispensable unity in the administration, care, arming, and equipment of all divisions of the German army, all orders relating to these matters hereafter issued to the Prussian army shall be communicated, for their proper observance, to the commanders of the other contingents, through the Committee on the Army and Fortifications provided for by Art. 8, No. 1.

ART. 64. All German troops are bound to render uncon-

ditional obedience to the commands of the Emperor. This obligation shall be included in the military oath.

The commander-in-chief of a contingent, as well as all officers commanding troops of more than one contingent, and all commanders of fortresses, shall be appointed by the Emperor. The officers appointed by the Emperor shall take the military oath to him. The appointment of generals, and of officers performing the duties of generals within a contingent, shall in every case be subject to the approval of the Emperor.

In the transfer of officers, with or without promotion, to positions which are to be filled by him in the service of the Empire, be it in the Prussian army or in other contingents, the Emperor shall have the right to select from the officers of all the contingents of the imperial army.

ART. 65. The right to construct fortresses within the federal territory shall belong to the Emperor, who shall ask in accordance with Section XII for the grant of the means required for that purpose, unless it has already been included in the regular appropriation.

ART. 66. In the absence of special conventions, the princes of the Confederation and the Senates shall appoint the officers of their respective contingents, subject to the restriction of Art. 64. They shall be the heads of all of the divisions of troops belonging to their territories, and shall enjoy the honors connected therewith. They shall have particularly the right to hold inspections at any time, and shall receive, besides the regular reports and announcements of changes to be made, timely information of all promotions and appointments concerning their respective contingents, in order to provide for the necessary publication of such information by state authority.

They shall also have the right to employ, for police purposes, not only their own troops, but all other divisions of the imperial army which may be stationed in their respective territories.

ART. 67. Unexpended portions of the military appropriation shall under no circumstances fall to the share of a single government, but at all times to the imperial treasury.

ART. 68. The Emperor shall have the power, if public security within the federal territory is threatened, to declare martial law in any part of the Empire. Until the publication of a law regulating the occasions, the form of announcement, and the effects of such a declaration, the provisions of the Prussian law of June 4, 1851, shall be in force.

Final Provision of Section XI

The provisions contained in this section shall be applied in Bavaria, in accordance with the more detailed provisions of the treaty of alliance of November 23, 1870, under III, sec. 5; in Württemberg, in accordance with the more detailed provisions of the military convention of November 21–25, 1870.

XII. *Finances of the Empire*

Art. 69. All receipts and expenditures of the Empire shall be estimated for each year, and included in the budget. The latter shall be fixed by law before the beginning of the fiscal year, in accordance with the following principles:

Art. 70. For the defrayal of all common expenses there shall serve first of all the joint revenues derived from customs duties, from common taxes, from the railway, postal, and telegraph systems, and from the other branches of the administration. In so far as the expenditures are not covered by such receipts, they shall be met by contributions from the several states of the Confederation in proportion to their population, such contributions to be fixed by the Imperial Chancellor, with reference to the total amount established by the budget. In so far as these contributions are not used, they shall be repaid to the states at the end of the year, in proportion as the other regular receipts of the Empire exceed its needs.

Any surpluses from preceding years shall be used, so far as the imperial budgetary law does not otherwise provide, for defraying the joint extraordinary expenses.[1]

Art. 71. The general appropriations shall, as a rule, be granted for one year; they may, however, in special cases, be granted for a longer period.

During the period of transition fixed by Art. 60, the properly classified, financial estimate of the expenditures of the army shall be laid before the Bundesrat and the Reichstag merely for their information.

Art. 72. For the purpose of discharge an annual report of the expenditure of all the revenues of the Empire shall be presented, through the Imperial Chancellor, to the Bundesrat and the Reichstag, for their approval.

Art. 73. In cases of extraordinary need, a loan may be

[1] As amended May 14, 1904.

contracted, or a guaranty assumed as a charge upon the Empire, by means of imperial legislation.

Final Provision of Section XII

Arts. 69 and 71 shall apply to expenditures for the Bavarian army only according to the provisions of the treaty of November 23, 1870, mentioned in the final provision of Section XI; and Art. 72 applies only to the extent that the Bundesrat and the Reichstag shall be informed that the sum necessary for the Bavarian army has been assigned to Bavaria.

XIII. *Settlement of Disputes and Penal Provisions*

Art. 74. Every attempt against the existence, the integrity, the security, or the constitution of the German Empire; finally, any offense committed against the Bundesrat, Reichstag, a member of the Bundesrat or of the Reichstag, an authority or a public officer of the Empire, while in the execution of their duty, or with reference to their official position, by word, writing, printing, drawing, pictorial or other representations, shall be judged and punished in the several states of the Empire in accordance with the laws therein existing or which may hereafter be enacted, by which provision is made for the trial of similar offenses against any one of the states of the Empire, its constitution, legislature, or estates, the members of its legislature or its estates, authorities, or officers.

Art. 75. For those offenses against the German Empire, specified in Art. 74, which, if committed against one of the states of the Empire, would be considered high treason, the Superior Court of Appeals of the three free Hanse cities, at Lübeck, shall be the competent deciding tribunal in the first and last resort.

More definite provisions as to the competency and the procedure of the Superior Court of Appeals shall be made by imperial legislation. Until the passage of an imperial law, the existing jurisdiction of the courts in the respective states, and the provisions relative to the procedure of these courts, shall remain as at present.

Art. 76. Disputes between the several states of the Union, so far as they do not relate to matters of private law, and are therefore to be decided by the competent judicial authorities, shall be adjusted by the Bundesrat, at the request of one of the parties.

In disputes relating to constitutional matters in those states of the Union whose constitution does not designate an authority for the settlement of such differences, the Bundesrat shall, at the request of one of the parties, effect an amicable adjustment, and if this cannot be done, the matter shall be settled by imperial law.

ART. 77. If justice is denied in one of the states of the Union, and sufficient relief cannot be procured by legal measures, it shall be the duty of the Bundesrat to receive substantiated complaints concerning denial or restriction of justice, which shall be proven according to the constitution and the existing laws of the respective states of the Union, and thereupon to obtain judicial relief from the state government which shall have given occasion to the complaint.

XIV. *Amendments*

ART. 78. Amendments of the constitution shall be made by legislative enactment. They shall be considered as rejected when fourteen votes are cast against them in the Bundesrat.

The provisions of the constitution of the Empire, by which certain rights are secured to particular states of the Union in their relation to the whole, may be amended only with the consent of the states affected.

C. UNITED STATES

The Constitution of the United States

(September 17, 1787 [1])

We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

Article I

Section 1. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives.

Sec. 2. The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature.

No person shall be a Representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons.[2] The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within

[1] This is the date upon which the constitution was agreed upon by the constitutional convention; according to the terms of the constitution it became effective on June 21, 1788, after ratification by nine states. The date set by Congress for proceedings to begin under the constitution was March 4, 1789, but the government was actually not organized until April of that year.

[2] Amended by the second section of the fourteenth amendment, p. 373.

every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.[1]

When vacancies happen in the representation from any State, the Executive authority thereof shall issue writs of election to fill such vacancies.

The House of Representatives shall choose their Speaker and other officers; and shall have the sole power of impeachment.

SEC. 3. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six years; and each Senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the Legislature of any State, the Executive thereof may make temporary appointments until the next meeting of the Legislature, which shall then fill such vacancies.

No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

The Senate shall choose their other officers, and also a President pro tempore, in the absence of the Vice President, or when he shall exercise the office of President of the United States.

[1] According to the present apportionment, based on the 1910 census, there are now 435 members of the House of Representatives, there being approximately one member to 212,000 people. L. H. H.

The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside: and no person shall be convicted without the concurrence of two-thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law.

SEC. 4. The times, places, and manner of holding elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

SEC. 5. Each House shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each House may provide.

Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either House on any question shall, at the desire of one-fifth of those present, be entered on the journal.

Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

SEC. 6. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the Treasury of the United States. They shall in all cases, except treason, felony, and breach of peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same;

and for any speech or debate in either House, they shall not be questioned in any other place.

No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either House during his continuance in office.

SEC. 7. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his objections, to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and, if approved by two-thirds of that House, it shall become a law. But in all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each House respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

SEC. 8. The Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate commerce with foreign nations, and among the several States, and with the Indian tribes;

To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish post-offices and post-roads;

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the Supreme Court;

To define and punish piracies and felonies committed on the high seas, and offences against the law of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions;

To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States, respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;

To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings; — and

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

SEC. 9. The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

No bill of attainder or ex post facto law shall be passed.

No capitation, or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

No tax or duty shall be laid on articles exported from any State.

No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another: nor shall vessels bound to, or from, one State, be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States: and no person holding any office of profit or trust under them shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

SEC. 10. No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

No State shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, e

into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

Article II

SECTION 1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice President, chosen for the same term, be elected as follows:

Each State shall appoint, in such manner as the Legislature thereof may direct, a number of Electors equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an Elector.

The Electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of Electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said House shall in like manner choose the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the Electors shall be the Vice President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice President.[1]

[1] This clause has been superseded by the twelfth amendment, p. 372.

The Congress may determine the time of choosing the Electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

No person except a natural-born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President, and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

The President shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

Before he enter on the execution of his office, he shall take the following oath or affirmation: — "I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to the best of my ability, preserve, protect, and defend the Constitution of the United States."

Sec. 2. The President shall be commander in chief of the army and navy of the United States, and of the militia of the several States, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may by

law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

SEC. 3. He shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both Houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

SEC. 4. The President, Vice President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

Article III

SECTION 1. The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

SEC. 2. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States, between a State and citizens of another State, between citizens of different States, between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign states, citizens, or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be party, the

Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations, as the Congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

SEC. 3. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted.

Article IV

SECTION 1. Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

SEC. 2. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall on demand of the executive authority of the State from which he fled, be delivered up to be removed to the State having jurisdiction of the crime.

No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

SEC. 3. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the Legislatures of the States concerned as well as of the Congress.

The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.

SEC. 4. The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion; and on application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic violence.

Article V

The Congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the Legislatures of two-thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

Article VI

All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding.

The Senators and Representatives before mentioned, and the members of the several State Legislatures, and all executive and judicial officers, both of the United States and of the several

States, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

Article VII

The ratification of the conventions of nine States, shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

ARTICLES IN ADDITION TO, AND AMENDMENT OF, THE CONSTITUTION OF THE UNITED STATES OF AMERICA

Article I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.[1]

Article II

A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

Article III

No soldier shall, in time of peace, be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

Article IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

[1] The first ten amendments were proposed by the first Congress, on September 25, 1789, and were ratified by three-fourths of the States during the two succeeding years.

Article V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

Article VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

Article VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

Article VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Article IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Article X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Article XI

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign state.[1]

Article XII

The Electors shall meet in their respective States, and vote by ballot for President and Vice President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice President; and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate; — the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted; — the person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right

[1] The eleventh amendment was proposed to the States on March 12, 1794, and was declared adopted on January 8, 1798.

of choice shall devolve upon them, before the fourth day of March next following, then the Vice President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice President, shall be the Vice President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice President of the United States.[1]

Article XIII

SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SEC. 2. Congress shall have power to enforce this article by appropriate legislation.[2]

Article XIV

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

SEC. 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of Electors for President and Vice President of the United States, Representatives in Congress, the executive and

[1] The twelfth amendment was proposed to the States on December 12, 1803, and was declared adopted on September 25, 1804.

[2] The thirteenth amendment was proposed on February 1, 1865, and was declared adopted on December 18, 1865.

judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

SEC. 3. No person shall be a Senator or Representative in Congress, or Elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State Legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each House, remove such disability.

SEC. 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

SEC. 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.[1]

Article XV

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

SEC. 2. The Congress shall have power to enforce this article by appropriate legislation.[2]

[1] The fourteenth amendment was proposed to the states on June 16, 1866, and was declared adopted on July 21, 1868.

[2] The fifteenth amendment was proposed on February 27, 1869, and was declared adopted on March 30, 1870.

Article XVI[1]

Taxes on Incomes.

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

Article XVII[2]

Senators elected by the people.

1. The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

Filling of vacancies.

2. When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: Provided, That the Legislature of any State may empower the executive thereof to make a temporary appointment until the people fill the vacancies by election as the Legislature may direct.

3. This amendment shall not be construed as to affect the election or term of any senator chosen before it becomes valid as part of the Constitution.

[1] Declared in force February 25, 1913.
[2] Declared in force May 31, 1913.

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